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# Review of Policies, Perspectives, and Expectations for Federal/State Collaboration in Western Water Resource Management

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## Executive Summary

Challenges associated with assessment and management of the Nation's water resources continue to increase, particularly in the Western United States (West). Factors such as a demographic shift in population, climate variability, water-rights issues, depletion of groundwater in storage, and protection of endangered species add to a growing complexity for resource management. States play a pivotal role in water planning and allocation alongside the significant regulatory presence of the Federal Government on public lands in the West. In the face of these challenges, Western States, as well as Federal leaders, have consistently promoted the critical need for Federal/State collaboration in carrying out their responsibilities regarding water protection and management. Despite efforts to meet the agreed-upon needs and described goals for collaboration, gaps persist between expected and actual engagement. Both State and Federal entities, including member agencies of the Western States Federal Agency Support Team (WestFAST), are interested in strategies to improve the effectiveness of Federal/State working relations and meet collaboration requirements and expectations.

In support of WestFAST interests, work was undertaken to review Federal and Western States perspectives on collaboration and to share information that may improve understanding of best practices for collaboration in water-resource program-development and rule-making processes. The work included: (1) the review, analysis, and summary of 56 policy and position documents, and other official communications discussing Federal/State engagement in water-resource issues; (2) the creation of a searchable document repository for reviewed documents, and (3) the development of a case-study survey tool to aid in future documentation and assessment of Federal/State collaborative events.

This review is not comprehensive, but represents an initializing phase and foundation for continued review of relevant documents and collaboration cases by WestFAST and its partners. The summary of the review reported here should not be interpreted as promoting or dismissing any perspective or opinion presented in the reviewed Federal or State documents.

Forty-five documents were reviewed from Western State sources. Although the purposes of and audiences for the reviewed communications varied, reoccurring themes, or principles, forming the basis for Western State perspectives and expectations of Federal/State collaboration on water-resource issues were evident and included:

1. American Federalism - The review found the principle of American Federalism—the constitutional division of powers between the Federal Government and State governments as presented in Executive Order 13132 on Federalism—to be foundational to Western State perspectives on and expectations for collaboration and to western leaders' consistent position that

- States are responsible for executing all powers of governance not specifically bestowed to the Federal Government by the U.S. Constitution, and
  - Federal actions that have substantive and direct impact on states (federalism implications) require the sponsoring Federal entity to have a “clear, consistent and accountable process” to provide states with “early, meaningful and substantive input” in the development of the actions and any associated plans or policies.
2. State Primacy - Western leaders frequently refer to the principle of state primacy as integral to their positions on Federal/State roles in western water issues: (1) that it is the primary authority of states to manage and allocate water resources within their boundaries; and (2) that states derive these independent rights and responsibilities under the U.S. Constitution (10th Amendment), which states that all powers not specifically delegated to the Federal Government are reserved for the states.
  3. Meaningful Consultation – Western State interpretations of the principles of federalism and state primacy, includes the expectation of “meaningful consultation” with Federal agencies prior to and during water-resource program development and rulemaking. Western leaders define meaningful consultation and collaboration as including:
    - Treating states, as well as their political subdivisions, as co-regulators and partners, not stakeholders, considering State views, expertise, and science in the development of any Federal Government action impacting State authority.
    - Ensuring Federal/State consultation takes place on an early and ongoing basis, throughout the planning and implementation of Federal programs and during rulemaking, and before the adoption of final plans and rules.
    - Ensuring that consultation and collaboration is government-to-government involving both Governors and State regulators, or their delegates.

Eleven Federal Government documents were selected for review to represent a range of sources from statutes to agency-specific directions. Reviewed documents summarized in this report included (1) Executive Order 13132 on Federalism, (2) The Unfunded Mandates Reform Act, (3) The Clean Water Act, (4) The SECURE Water Act, (5) Presidential Memorandum: Building National Capabilities for Long-Term Drought Resilience, and (6) Bureau of Land Management’s Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners. The review of Federal Government documents indicated a similar intent toward coordination and collaboration in water-resource conservation, protection, and management to those expressed in reviewed Western State positions. Indeed, a substantial portion of the language related to Federal/State collaboration in reviewed Federal Government documents was found to correlate, in concept, with Western State definitions of meaningful collaboration summarized above.

Although the review found cases in which Western State water leaders expressed satisfaction with the level of Federal/State collaboration in water-resource issues, reviewed documents also described cases where western leaders believed there was a lack of meaningful cooperation and where Federal Government consultation with Western States was inadequate. Several reviewed Federal Government

reports identified some of the challenges Federal agencies and their staff face in meeting collaboration and State partner expectations including

- Variation in individual skills as well as training in cooperation requirements and opportunities,
- Limited time and financial resources for collaboration efforts,
- Inconsistent support from Senior Leadership,
- Insufficient guidance and flexibility, including in institutional procedures, to support collaboration, and
- Integrating the involvement of multiple parties with competing interests and values.

These documented challenges support the proposal that effectiveness of Federal/State working relations may be increased with improved understanding of the requirements and expectations for collaboration. Although not exhaustive, the completed review and its products provide one resource for improving that understanding and can serve as a primer on Federal Government and State positions on collaboration for use by those interacting in water resources in the West.

To allow easy access to the information developed in this work, all reviewed documents were cataloged in an [online document repository](#). The repository's dashboard allows a user to sort for documentation of cases, or positions, on Federal/State collaborative efforts using document attributes including keywords. The repository's platform and dashboard are served and maintained by the Western States Water Council and WestFAST with access via their internet home pages.

To aid in future WestFAST (and associated agencies) investigations of Federal/State collaboration, a survey tool was developed to investigate best-practices and potential benefits in collaboration events. The tool allows for the evaluation of: (1) participants perspectives on the success, or lack thereof, of the collaboration event; (2) the participants' knowledge and understanding of defined collaboration opportunities and limitations; and (3) their expectations of the level of collaboration that should take place. The tool is designed to be used as a component of WestFAST-led collaboration case studies.

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*Report cover photo by Matt Miller, U.S. Geological Survey*

# Review of Policies, Perspectives, and Expectations for Federal/State Collaboration in Western Water Resource Management

## Introduction

### Need for Review

Challenges associated with water-resource management continue to increase, particularly in the Western United States (West). Such factors as a demographic shift in our population, climate variability (including the potential for severe and sustained droughts), climate change, water-rights issues, depletion of groundwater in storage, introduction of new water storage and water-use technologies, and protection of endangered species, add to a growing complexity for resource management (Anderson and Woosley, 2005). States play a pivotal role in water planning and allocation alongside the significant regulatory presence of the Federal Government on public lands in the West. In the face of these challenges, State leaders have come together to reiterate the critical need for Federal/State collaboration (Western Governors' Association [WGA], 2006a and 2008). Western leaders and water-resource managers have suggested that moving State and local collaboration back into the Federal decision-making process can have the potential to fundamentally change the way states and the Federal Government carry out their responsibilities regarding water management (WGA, 2008). Federal resource management agencies have also recognized the critical role of states in water planning, allocation, and preservation in Federal laws, water-resource policies and directives, and in Executive Orders and Presidential Memoranda (U.S. Fish and Wildlife Service [USFWS], 1973; Federal Register, 2000; The White House, 2016a).

Despite efforts to meet the agreed-upon needs and described goals for collaboration, gaps remain in some cases between expected and actual collaboration prior to, or during policy, program, and project planning (referred to in this review as proactive collaboration) that affect water resources (WGA, 2013, 2014a; Western States Water Council [WSWC], 2014a, 2014b, 2017a; Greenlay and Langsdale, 2015). Although, in some cases, there are legal and policy limitations to the level of collaboration Federal Government agencies may engage in, reasons for inconsistencies in proactive Federal/State collaboration may also include an incomplete understanding by Federal managers of Federal instructions on collaboration requirements and opportunities (Greenlay and Langsdale, 2015). Also, Federal managers may not be aware of the expectations of State partners for collaboration or the potential benefits of proactive collaboration to the rule-making and program development process. Attempts at proactive collaboration by Federal agencies may also be affected by the challenges presented by engaging the diverse opinions and independent attitudes of multiple levels of State and

local entities that wish to have a seat at the program and policy-development table (U.S. Bureau of Land Management [BLM], 2012, Greenlay and Langsdale, 2015).

Both State and Federal entities, including member agencies of the Western States Federal Agency Support Team (WestFAST), are interested in strategies to improve the effectiveness of Federal/State working relations. One step to improvement, they believe, is through enhanced understanding of the respective requirements, perspectives, and expectations for collaboration of both partners.

## Challenges in Western Water Management

Federal, State, and local water-resource managers can agree on the scarcity of and increasing demands on water resources in the West (Anderson and Woosley, 2005, WGA, 2006a; U.S. Bureau of Reclamation [Reclamation], 2012). A unique combination of characteristics and conditions in the West, including increasing populations in many areas, and the increasing demand for water for recreation, scenic value, and fish and wildlife habitat, has resulted in conflicts surrounding water resources in many regions (Cody and Hughes, 2003).

The American West's water-resource environment is different from that in the eastern half of the country (East) in several ways that add complexity to the activities of water-resource conservation and management. Although a large portion of the West is characterized by low precipitation, western states exhibit some of the largest areal climate extremes in the United States with climates ranging from the hot and dry deserts of the southwest, to the cold of the Rocky Mountains and wet areas of the Pacific Northwest (Anderson and Woosley, 2005). In many western states a larger proportion of the annual precipitation falls as snow in winter months, localized on mountain ranges at higher elevations. Precipitation and streamflow are proportionally more variable from year to year in the West than in the East, causing western water managers to constantly consider extremes of drought and flood, and the need to store water when available to manage it during dryer times (WSWC, 2016).

### *Comparative variability of Western precipitation*

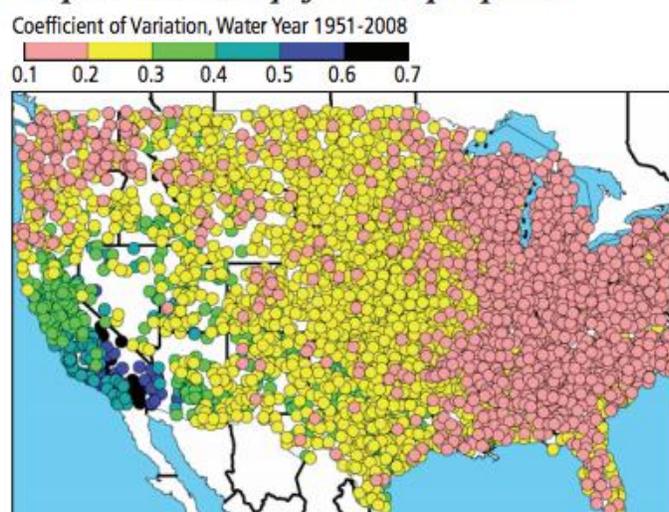
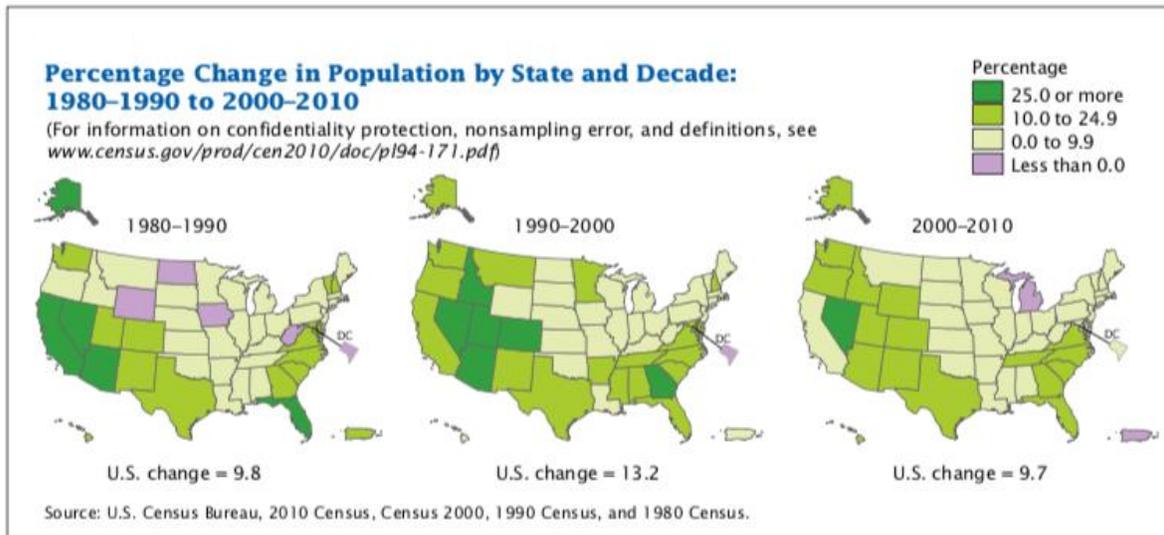


Figure provided courtesy of Mike Dettinger (2011), USGS

Climate change poses additional challenges to the efforts of Federal Government and State agencies to protect, conserve and manage water resources. As the effects of climate change are being felt across the West, water-management partners must be prepared to respond to shifts in the baseline of what is considered “normal” and water demands over the coming decades. The potential for increased variability and intensity of droughts and floods, raises concerns about infrastructure safety, and the resiliency of species and ecosystems to these changes.

Within the extremely variable (temporally and spatially) and changing western climate regimes reside some of the fastest growing populations in the Nation. According to the 2010 U.S. Census, about one-third of the population of the United States now resides in the 17 western states. Projections for population growth in the southwest are estimated to increase consistently as a proportion of the total U.S. population through 2030 (Campbell, 1996a, 1996b).



Federal reserved water rights attached to a large amount of Federal land in the West exist with senior priority dates. A major challenge for water users in the West is that these reserved rights may supersede other existing users (Greer and Jones, 2015). The minimum amount of water required, however, to sustain native peoples, a riparian system, or an endangered species eventually will need to be known to manage the available water supply.

Addressing these ever increasing and in some cases unique challenges associated with water management in the West is a concern at all levels among accountable water users, water managers, and science agencies. Although water-resource planning, allocation, and protection remain principally a local and State prerogative, in the West, where the Federal Government is a significant land owner with a significant regulatory presence, the Federal role is also critical. Although engineering, management, and conservation measures from the local to national scale have supported the supply of water to a continually growing West to date, legal and physical limits to growth are now presenting themselves (WGA, 2006). As the supply of good-quality water begins to intersect with upwardly trending demand supporting growth and ecosystem health, collaboration among the states and the Federal Government becomes increasingly important as both roles seek to improve implementing their respective responsibility regarding water management. Western policy makers and water managers feel that effectively addressing these challenges will require stronger collaboration that transcends political and geographic boundaries between State and Federal agencies (WSWC, 2015).

## **Objectives and Scope**

The objective of this project is to review Federal and Western State perspectives and positions on collaboration, and to gather and share information that may improve understanding of best practices of collaboration in the water-resource program-development and policy-making process. This work includes the review, analysis, and summary of selected policy and position documents, and other official communications; and the creation of a searchable document repository for reviewed documents. A new case study survey tool is also presented to allow for future documentation and assessment of selected Federal/State collaborative events.

The work described in this report is considered an initial phase of a potential continuing assessment. The resulting compilation is not comprehensive; rather, the review of documents and development of a searchable document repository provide the foundation for continued gathering, review, and a summarization of relevant documents. Results of this review, including the case study survey tool and searchable report repository, are made available via the WSWC and WestFAST web pages. Both entities—WSWC as a collaboration of Western States and WestFAST as a collaboration of Federal agencies with water-resource responsibilities in the West—have as part of their purpose the promotion and facilitation of coordination between Federal and State partners. Thus, these two groups are ideal bodies to receive, use, and disseminate the results of this work.

Documentation of the review in this report should not be interpreted as promoting or dismissing any perspective or opinion presented in reviewed Federal or State documents. The review of positions is limited to documenting policies, perspectives, expectations, and selected cases of Federal/State collaboration, and provides a primer on Federal/State positions on collaboration for use by those interacting in the issues of water resources in the West.

## **Policies, Positions, and Expectations for Collaboration in Water-Resource Management in the West**

Historically, collaboration among Federal and State entities in the preservation and management of national resources, including water resources, has been seen as vital to the success of those endeavors (USFWS, 1973; Dover, 1996; WGA, 2006). The Federal Government and its resource-management agencies also have recognized the role of states in water planning, allocation, and preservation and the necessary role of collaboration in those tasks (The Clean Water Act [CWA], 1977; Federal Register 2000; The White House, 2016a). This section documents the results of the review of selected Federal and State policy and position documents, and other official reports and communications, relevant to the study topic. The review was conducted to provide a description of (1) broad goals and requirements for Federal/State collaboration in water-resource policy, (2) regulatory and policy-defined expectations of collaboration that encompass or are specific to Federal Government agencies with water-resource responsibilities in the West, and (3) Federal and State agency perspectives, definitions, and expectations of collaboration in general.

Analysis of Federal policy and position documents included selected Federal Acts, policy statements, directives, instructions, and rules governing intergovernmental consultation and proactive collaboration.

Reviewed State documents were compiled, principally but not exclusively, from the WGA and the WSWC. The WGA represents the Governors of 19 western states and three U.S. flag islands and has been an instrument for bipartisan policy development and information exchange. The WGA has established positions, representing the intent of all member states, on Federal/State relations including in the area of water-resource management. The WSWC consists of representatives appointed by the Governors of 18 western states working specifically toward the conservation, development, and management of water resources (WSWC, 2019). The WSWC, convened in 1965, is charged with, among other duties, maintaining vital state prerogatives while identifying ways to accommodate legitimate Federal Government interests, and has defined Western State positions on inter-State and Federal/State collaborations toward this goal. Published perspectives, policies, and positions, from these organizations were emphasized in the review because they, in most cases, represent the unified opinion of all partner states.

## Western States

Forty-five documents were reviewed from Western State sources. As noted previously, most documents were authored and published by the WGA or the WSWC, as their pronouncements represent the unified opinion of all partner states. Sources of other documents reviewed included

- Conference of Western Attorneys General
- Council of State Governments West
- Western Interstate Region: National Association of Counties
- Pacific Northwest Economic Region
- Association of Clean Water Administration
- State of Alaska
- Association of Western State Engineers
- South Dakota Department of Environment and Natural Resources
- City of Altus, Oklahoma

A list and summary of reviewed documents is included in appendix A. The summaries and links to complete documents have also been placed in a [searchable document repository](#) residing with the WSWC and WestFAST, the development and function of which is discussed later in this report.

The review of Western State documents is summarized below by themes or general principles frequently referenced in reviewed documents and which underpin Western State perspectives on Federal/State collaboration in working with and managing water resources within their State boundaries.

## General Themes and Principles

### *Federalism*

The term “federalism” refers to the division of authority and function between and among the National (Federal) Government and the various State governments (Gerston, 2007). The specific concept of “American Federalism” favored in reviewed Western State positions is supported, as described by western leaders (WGA, 2016), 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.”

Many of the reviewed State documents cite the concept of American Federalism as a foundational principle for the way the Federal Government and Western States should engage on water-resource assessment, regulation, and management (WSWC, 2014; WGA,2016). On August 4, 1999, President William Clinton signed Executive Order (EO) 13132 (Federal Register, 1999), addressing the topic of federalism and encouraging cooperation between State and Federal agencies within the parameters of the Constitution. The objective of the EO was to guarantee the Constitution's division of governmental responsibilities between the Federal Government and the states. Western leaders frequently reference this EO as supporting their position that Federal actions that have federalism implications for states require the sponsoring Federal entity have a “*clear, consistent and accountable process*” to provide states with “*early, meaningful and substantive input*” in the development of the action and any associated plans or policies (WGA, 2016).

The EO defines federalism implications to include “*regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States*” (EO 13132§ 1(a)) and notes that “*Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.*” (EO 13132§ 2(a)). In recent policy resolutions (WGA 2016; 2017a), Western States and their various coalitions have frequently referenced EO 13132 in support of their understanding and position that

1. Under the American version of federalism, the powers of the Federal Government are narrow, enumerated and defined, whereas the powers of the states are vast and indefinite, and
2. States are responsible for executing all powers of governance not specifically bestowed to the Federal Government by the U.S. Constitution.

Although influencing Western State perspectives on Federal/State relations over a broad range of interactions, the principle of American Federalism is particularly prevalent in State positions and policies on western water resources (WGS, 2016 and WSWC, 2017b). Western States have highlighted their interpretation of American Federalism, as they believe is supported in EO 13132, noting that key regulatory acts such as the Clean Water Act (CWA) and the Endangered Species Act (ESA), are “*built upon the principle of cooperative federalism in which Congress intended the federal government to, together, implement these acts as partners, delegating co-regulator authority to the states.*” The word “partner” is repeatedly used in Western State position and policy statements to describe the expected context for Federal/State collaboration in water-resource issues including work covered under the CWA and the ESA.

In a 2017 official communication (WGS, 2017a), the WGA noted that interpretations of American Federalism and determinations of which issues are or are not “*national in scope or significance*” may vary across administrations. Western States, represented by the WGA, have stated their opinion that the reality of this variability highlights the importance of continuous communication and cooperation

between the Federal Government and Western States to avoid misunderstandings and misaligned expectations in resource management:

*“As Governors, we recognize that each Administration will approach federalism differently and that each state must decide when and where to exercise state authorities in isolation, cooperation, or dissent of Administration policies. Because both the demarcation between state and federal roles and responsibilities and their execution can vary based on interpretation and the issue at hand, it is of utmost importance that the federal government maintain appropriate cooperation and consultation with states concerning policy development. Such consultation can help ensure that regulations do not infringe on state authority, dampen innovation and impair on-the-ground problem-solving.”*

### *State Primacy in Water Resources*

Western State leaders note in reviewed documents the differences in authority between Federal and State governments to be defined as

- 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, and
- 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 the states overrides that of the Federal Government.

Although Western State leaders recognize the various contexts in which the authorities of these respective levels of U.S. Government manifest and intersect (WGS, 2017a), they frequently declare their position that states are the primary authority (State primacy) for allocating, administering, and developing water resources and are primarily responsible for water supply planning within their boundaries (WSWC, 2015, 2018a; WGA, 2017a, 2018a;). As recently as 2017, in a Statement of Interest to the U.S. Environmental Protection Agency (EPA) (WGA, 2017b), the WGA declared

*“...deference to state primacy in water management and allocation decisions is a well-established principle of federal case law and statutory authority. The U.S. Supreme Court has consistently held that states established their sovereign authority over water resources upon their admission to the Union under the Equal Footing Doctrine and continue to maintain such authority under their own legal structures.”*

State primacy is considered by Western States as fundamental to a sustainable water future as stated in the WSWC’s “Vision on Water” (WSWC, 2015):

*“Federal water planning, policy development, regulation, protection, and management must recognize, defer to, and support state water laws, plans, policies, programs, water rights administration, adjudication and regulation, compacts and settlements.”*

In that same vision statement, the WSWC noted Western State expectations of collaboration in water resources within their borders:

*“Rather than attempt to dictate water policy, the federal government should engage states early in meaningful consultation...”, thus avoiding the need for federal regulatory mandates.”*

A third relation between State and Federal Government authority exists in the cases where the U.S. Congress has, by statute, provided for the delegation of authority to states over Federal Government program responsibilities including environmental and water-resource related programs. Many statutory regimes—Federal Government environmental programs for example—include establishment of Federal standards with delegated authority available to states that wish to implement those standards. The CWA, for example, requires that the EPA limit discharges to the Nation's water to only those permitted pursuant to the National Pollutant Discharge Elimination System (NPDES). The EPA can, however, delegate to states the authority to administer the NPDES program ((CWA) Section 402 (b) and 40 CFR Part 123). In the CWA case, this authorization (sometimes referred to as delegation or primacy) is granted by EPA to a State if it can demonstrate that it has a program at least as stringent as EPA's regulations (EPA, 2019a). According to the Environmental Council of the States (2017), 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 enforcement and compliance actions and the collection of more than 94 percent of the environmental quality data currently held by the EPA.

Although State participation in CWA and ESA programs and other programs through delegated authority is ubiquitous throughout the West, Western States have frequently noted, over time, their perception that the Federal Government implementation of delegated primacy is incomplete and that Federal regulation and oversight of delegated authority, at times, encroaches on State prerogatives, especially in natural resource management (WSWC, 2014a; Association of Clean Water Administrators, 2017; and WGA, 2014b, 2018b). They note that these Federal actions, at times, neglect State expertise and diminish the statutorily-defined role of states in exercising their authority to manage delegated environmental protection programs.

#### *“Meaningful” Consultation” - Western State Expectations of Government-to-Government engagement*

The review of Western State documents identified numerous references on the need and expectation by states for “*early and meaningful*” consultation and collaboration between Federal and State partners on water-resource issues. The excerpt below from WGA’s recommendations to the Federal Executive Branch titled “Building a Stronger State-Federal Relationship” and “Process Improvements to Build a Stronger State-Federal Relationship” (WGA 2017, 2018c) summarizes their position:

*“Each Executive department and agency should 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 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.”*

The expectation and need for “early and meaningful” input is repeated in reviewed Western-State documents treating a broad range of Federal Government water-resource regulatory and support activities from rulemaking to program development and strategic planning. The review revealed multiple cases, however, where there were discrepancies between Federal and State partner perspectives and understanding on when agency-to-agency collaboration is needed and what suffices for early and meaningful input.

One example of different perspectives on the appropriate level of collaboration on water-resource-related regulation and rules found in this review was the case of a proposed U.S. Forest Service (USFS) Directive on Groundwater Resource Management, published in the Federal Register for public comment on May 6, 2014 (Federal Register, 2014). The USFS directive was proposed to help develop a comprehensive policy to manage groundwater resources on National Forest Service lands and to establish new processes and procedures for special use authorizations that involve access to and withdrawal of groundwater resources (U.S. Department of Agriculture, 2014). The USFS proposal recognized the role of states in managing water resources within their borders and that management of those resources on National Forest Service lands needs to be carried out cooperatively to be effective. Western leaders and water managers, however, were unsatisfied with Federal/State consultation on the directive noting that input had been limited to a public comment process and period. In an October 14, 2014 letter to Tom Tidwell, Chief of the USFS at that time (WSWC, 2014b), the WSWC wrote

*“While perhaps well intended, our member States have serious concerns over the lack of substantive state participation in the development of the directive, especially given that the States have primary, often exclusive authority, over the protection, development and management of waters within their boundaries, including surface waters arising on, and flowing across USFS lands, and groundwater below those lands... USFS should have consulted extensively with the States before publishing the proposed directive...”*

*“The Council is especially concerned by the lack of state consultation in the development of the proposed directive and its assertion that it will not have substantial direct effects on the states, on the relationship between the federal government and the States, and the distribution of powers between the various levels of government... It is difficult to understand how the USFS will be able to carry out this proposal in coordination with the States, as the directive proposes, without robust and meaningful consultation with the States... The states should have been consulted much earlier in the development of this directive...”*

In an August 29, 2014 letter from Thomas Vilsack, then Secretary of the U.S. Department of Agriculture (USDA), the USDA extended an open invitation to the WGA to meet and discuss the proposed directive (U.S. House of Representatives Committee on Agriculture, 2014). On June 19, 2015, the USFS withdrew the proposed directive to allow time for further review and to seek additional partner input (WGA, 2015).

As indicated in the above case, principal to the Western State definition of meaningful consultation is the consideration of states as partners, or co-regulators, in water-resource issues. In a testimony before

the U.S. House of Representatives Committee on Oversight and Government Reform (2018) on February 27, 2018, James D. Ogsbury Executive Director of the Western Governors' Association stated in his opening remarks, that *"states are not stakeholders."* The statement echoes a Western State credo found repeatedly during the document review that underpins Western State expectations of Federal/State collaboration in water-resource issues and the states' definition of "meaningful collaboration." Mr. Ogsbury continued:

*"States, tribes, local governments, groups and organizations, and other stakeholders ..." This phrase (and multiple variants thereof) often appears in legislation and throughout federal proclamations: notices of rulemakings, requests for comments, departmental orders, and all types of policy statements. The idea that it communicates (i.e. that states stand in the same relation to the federal government as any other organized group) has taken firm hold in various theaters of the federal executive and legislative branches of government. This widespread notion, however, is legally incorrect and contrary to our fundamental principles of governance. States are not stakeholders. Rather, they are a sovereign level of United States government."*

In a 2018 letter from the WGA (2018c) to Douglas L. Hoelscher, Special Assistant to the President and Deputy Director of Intergovernmental Affairs, the WGA wrote

*"Even where consultation is statutorily required, agencies often direct states to comment on their actions through the stakeholder process, in the same manner as a member of the public. Or agencies argue that state consultation can be fulfilled through typical notice-and-comment rulemaking, which would otherwise be required by law, and which does not involve any meaningful government-to-government exchange with states."*

Western Governors', in their Policy Resolution 2017-01 - Building a Stronger State-Federal Relationship (2017a), added detail to their definition and expectation of meaningful consultation and collaboration summarized below:

- Federal agencies should take into account State data and expertise in the development and analysis of underlying science serving as the legal basis for Federal Government regulatory action, and that states should be provided more representation on committees and panels advising Federal Government agencies on these actions.
- 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.
- 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 Government regulatory actions prior to finalization.

The WSWC also indicated in a July 2015 Position Paper (WSWC, 2015) what, in their opinion, meaningful collaboration is not - speaking specifically about the Federal Government implementation of the CWA:

*“...information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states; Includes robust and meaningful state participation and consultation in its development and implementation. Such consultation should take place as early as possible and before the publication of any proposal for public comment, when irreversible momentum may preclude effective state participation and the consideration of alternate ways of meeting federal objectives.”*

### **Western State Perceptions of the Status of Federal/State Collaboration Versus Partner Expectations**

In the WGA 2008 report “Water Needs and Strategies for a Sustainable Future: Next Steps”, Western Governors and their affiliate, the WSWC, highlighted the vital role of Federal/State cooperation in securing a sustainable water-resource future in the West. While emphasizing that success would depend in large part on State initiative and innovation, the Governors noted that Federal support to State efforts would require the Federal Government to provide a “*rational federal regulatory framework*,” stating that this would be paramount in this process to move State and local government participation “*back into the process of federal decision making*.”

To aid in moving Federal/State collaboration in water resources in their desired direction, the WSWC entered into a formal agreement to create a Western States Federal Agency Support Team, known as WestFAST, made up of representatives of Federal agencies having water-resource responsibilities in the West, and to create a WSWC “liaison position” to facilitate collaboration (WestFAST, 2015a). Western State leaders and Governors view the creation of WestFAST and the Federal liaison position as a positive step forward, particularly in developing lines of communication between Federal and Western State governments. In an August 2015 commemoration on the 50th anniversary of the creation of the council, former WSWC Chairpersons Duane Smith and Hal Simpson noted that “*an important piece of WSWC work at that time was the organization of WestFAST...*” and that “*WestFAST has been a great success*” (WestFAST, 2015b).

Although Western State water leaders have noted positive events in Federal/State relations and collaboration, they have also pointed out cases where they believe Federal Government collaboration with Western States during rulemaking and programmatic activities has been inadequate. Although not a comprehensive list of these complaints, the below excerpts from reviewed documents provide examples of Western State expectations of Federal/State consultation and their perception that, in the cited cases, there was room for improvement by Federal agencies in meeting those expectations.

- Excerpt from WGA August 21, 2013 letter to Honorable Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works) (WGA, 2013) concerning U.S. Army Corps of Engineer’s pending rulemaking on the definition and treatment of surplus water in Corps reservoirs:

*“WGA understands that the Administration is nearing completion of its review of a draft rule to address the policies by which it will determine prices for surplus water contracts. WGA is concerned that the Corps has not adequately engaged the states – which are responsible for the allocation and management of their water resources – in the development of this draft and that its release may be premature. Prior to publishing it in the Federal Register for public comment, WGA urges you to first initiate a substantive dialogue with the states.”*

- Excerpt from Resolution of the WSWC July 18, 2014 Position #410 regarding Clean Water Act Jurisdiction (WSWC, 2014a):

*“WHEREAS, information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states; NOW, THEREFORE BE IT RESOLVED that Congress and the Administration should ensure that any federal effort to clarify or define CWA jurisdiction: [giving] as much weight and deference as possible to state needs, priorities, and concerns.”*

- Excerpt from WGA August 21, 2014 letter to Ms. Carolyn Holbrook, Recreation, Heritage and Volunteer Resources Staff, United States Forest Service on proposed USFS directive concerning water rights for ski areas on National Forest Service lands (79 FR 35513, June 23, 2014) (WGA, 2014c):

*“WGA urges the Forest Service to consult with states in a meaningful way prior to proposing future directives or rules. This proposed directive, like many other proposals from the USFS and other federal agencies, was developed without any state consultation of which WGA is aware. For similar proposals in the future, we invite you to consult with the states prior to publishing documents in the Federal Register. This will help the Service to identify and avoid sticking points in proposed directives and rules. We invite the USFS to work through WGA, the Western States Water Council, and their member states to facilitate dialogue on ways to improve this (and any future) proposed directive.”*

- Excerpts from WSWC June 29, 2017 Position No. 411 - Resolution regarding water-related Federal Government rules, regulations, directives, orders, and policies (WSWC, 2017c):

*“WHEREAS, State consultation should take place early in the policy development process, with the states as partners in the development of policies; and WHEREAS, federal agencies have inappropriately dismissed the need to apply this requirement to their rulemaking processes and procedures; and*

*“WHEREAS, an increasing number of federal regulatory initiatives and directives are being proposed that threaten principles of federalism, an appropriate balance of responsibilities, and the authority of the states to govern the appropriation, allocation, protection, conservation, development and management of the waters within their borders; and WHEREAS, State consultation should take place early in the policy development process, with the States as partners in the development of policies; and WHEREAS, federal agencies have inappropriately dismissed the need to apply this requirement to their rulemaking processes and procedures... Failures of the federal government to consult with states reflect a lesser appreciation for local knowledge, preferences and competencies.”*

- Excerpted from WSWC August 3, 2018 Position #425 - Resolution regarding Endangered Species and State Water Rights (WSWC, 2018b):

*WHEREAS, opportunities exist for greater cooperation to conserve threatened and endangered species, while recognizing state granted water rights and addressing western water issues, without unmitigated or uncompensated “takings” of either. NOW, THEREFORE, BE IT RESOLVED that the Council calls upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress’ intent to resolve water and species protection issues.*

In a WGA 2014 Policy Resolution (2014d), Western Governors expressed concern over what they perceived to be a general decline in effective Federal/State partnering in natural resources, including water-resource management concerns, stating that *“over time, the strength of the Federal/State partnership in resource management has diminished”* and that Federal Government agencies had been *“increasingly challenging state decisions in water resource management noting that these federal actions neglected state expertise and diminish the statutorily-defined role of states in exercising their authority to manage delegated environmental protection programs.”* This general concern was restated by Western Governors in a WGA 2017 Policy Resolution - *“Building a Stronger State-Federal Relationship”* (2017a). That 2017 resolution included, however, a statement of optimism for a new *“opportunity to realign the state/federal relationship.”* Speaking of the *“new Administration”* in the White House, the Governors wrote

*“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...”*

## Federal Government

Twelve Federal Government documents were reviewed for statements and commentary describing Federal/State relationships and collaboration in water-resource related issues and management (appendix A). Reviewed documents were selected to include a range of sources within the Federal Government from Federal Government laws to agency specific policies and directions. Summaries of a subset of those documents are provided in this section. The summaries and links to all reviewed documents have been placed in a searchable, [online document repository](#) accessible on WSWC and WestFAST webpages, the development and function of which is discussed later in this report.

### Unfunded Mandates Reform Act

On March 22, 1995, President Clinton signed into law the "Unfunded Mandates Reform Act (UMRA) of 1995" (P.L. 104-4): Section 204(a) (United States Government Publishing Office, 2019). This Act requires each Federal agency, to the extent permitted by law, to

*"...develop an effective process to permit elected officers of state, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates."*

Section 204(b) of the UMRA provides an exemption from the Federal Advisory Committee Act (5 U.S.C. App.) for intergovernmental consultations involving intergovernmental responsibilities or administration. The Federal Advisory Committee Act (FACA) is a Federal Government law that governs the establishment and operation of advisory committees. Its purpose is to ensure that the public has knowledge of and an opportunity to participate in meetings between Federal agencies and groups that the agency either has established, manages, or controls for the purpose of obtaining group advice and recommendations regarding the agency's operations or activities (U.S. Department of the Interior, 2019). The FACA requires that such groups be chartered, that their meetings be announced in advance and open to the public, and that their work product be made available to the public. A subsequent 1995 Office of Management and Budget memorandum (OMB, 1995) to the heads of Federal Government departments and agencies gives further instruction on the exemption:

*"...the process required by the Federal Advisory Committee Act is not to act as a hindrance to full and effective intergovernmental consultation... In order to facilitate the consultation process, section 204(b) of the Act [the UMRC] provides an exemption from the Federal Advisory Committee Act ("FACA") (5 U.S.C. App.) "for the exchange of official views regarding the implementation of public laws requiring shared intergovernmental responsibilities or administration." This exemption applies to all Federal agencies subject to FACA and is not limited to the intergovernmental consultations required by Section 204(a) but instead applies to the entire range of intergovernmental responsibilities or administration. In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration."*

The 1995 memorandum provided instructions for Implementing sections of the UMRA pertaining specifically to State, local, and tribal government input:

*“...it is important that this intergovernmental consultation process not only achieves meaningful input, but also builds a better understanding among Federal, State, local, and tribal [parties].”*

Discussing the nature of desired intergovernmental input, the memorandum continues:

*“Intergovernmental consultation should take place as early in the regulatory process as possible. Except where the need for immediate agency action precludes prior consultation, consultation should occur before publication of the notice of proposed rulemaking or other regulatory action proposing a significant Federal intergovernmental mandate. Consultation should continue after publication of the regulatory action initiating the proposal. Except in exceptional circumstances where the need for immediate action precludes prior consultation, consultation must occur prior to the formal promulgation in final form of the regulatory action.”*

The memorandum instructs Federal agencies to develop an effective process to ensure that "elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf)" who wish to provide meaningful and timely input are able to do so.

### **Executive Order 13132: Federalism**

As noted previously in this report, Western States, in multiple reviewed documents, cite American Federalism as a foundational principle influencing their expectations of the way the Federal Government and Western States should engage on water-resource assessment, regulation, and management. Executive Order 13132 on Federalism, issued in 1999 (Federal Register) and cited frequently by Western States to support their positions on American Federalism and federalism implications, has the objective of guaranteeing the Constitution's division of governmental responsibilities between Federal and State governments, building on policies of the UMRA (EPA, 2019). Executive Order 13132 is the most recent official instruction from the Executive Branch on the principle of federalism and provides instructions on Federal/State relations in several documented areas of interest for Western States. The below is a summary of three key parts of EO 13132 that inform Federal/State relations and requirements for, and expectations of, Federal/State collaboration.

#### State Primacy and Deference to States in Matters of Natural Resource Management:

- “National action limiting the policy-making discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.” EO 13132§ 3(b).

- “With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.” EO 13132§ 3(c).
- “When undertaking to formulate and implement policies that have federalism implications, agencies shall: (1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States; (2) where possible, defer to the States to establish standards; (3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and (4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.” EO 13132§ 3(d).

#### Federal agency consultation with states:

- “Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency’s implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency’s consultation process.” EO 13132§ 6(a).
- “. . . no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation, (1) consulted with State and local officials early in the process of developing the proposed regulation.” EO 13132§ 6(c).

#### Use of States as “Laboratories”

- “States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories.” EO 13132§ 2(e).
- “In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.” EO 13132§ 2(f).
- “The national government should be deferential to the States when taking action that affects the policy making discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.” EO 13132§ 2(i).

### **The Clean Water Act**

The Clean Water Act (CWA) has been labeled the Nation’s most comprehensive water law applying to rivers, streams, lakes, wetlands and estuaries alike. The CWA requires protection for waters that are clean and restoration for waters that are impaired and provides a strong system for stopping and

preventing pollution (Killam, 2005). Per Section 101 of the CWA, the principal objective of the CWA “...is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

The CWA, as noted previously in this review, is an example of a statute where the U.S. Congress has provided for the delegation of authority to states over an environmental and water-resource Federal Government program. Under the CWA, states are responsible for establishing water-quality standards that define the goals and pollution limits for all waters within their jurisdictions. As reported here, states have chosen to accept most of the primary responsibility for implementation of CWA programs and currently execute the vast majority of regulatory tasks.

The CWA defines requirements for Federal/State consultation and collaboration in over 30 locations including in the following areas:

- Conduct, promotion, and reporting of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution,
- Development of water-quality monitoring programs and networks,
- Development and issuing of the latest scientific knowledge available relevant to the purposes and programs of the Act,
- Development and issuing of regulations, guidelines processes, procedures, and methods to control pollution under CWA programs,
- Regulation of pollution control (i.e. discharge, disposal, etc.),
- Development and publication of water-quality criteria and restoration factors, and
- Reporting to Congress (on cost, performance etc.).

The intent to consider State authority and Federal/State cooperation in CWA implementation is stated in the CWA’s Section 101 (cited often in Western State communications and resolutions on water):

*Section 101(g) (Declaration of Goals and Policy) It is the policy of Congress 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. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall cooperate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.*

It should also be noted that, in multiple sections, the CWA differentiates between engagement with states and the general public, a point that is frequently discussed in Western State communications and resolutions.

### **The Secure Water Act**

Subtitle F of the Omnibus Public Land Management Act of 2009 (Public Law (P.L.) 111-11), also known as the SECURE Water Act, was passed into law on March 30, 2009, to help address the Nation’s need for water availability and use information. The statute establishes that Congress finds that data, research,



Secretary of Energy has access to the best available scientific information with respect to presently observed impacts and projected future impacts of global climate change on water supplies that are used to produce hydroelectric power.

**Section 8,b(2)(B-C)** In coordination with the Advisory Committee and State and local water resource agencies:(i) assess the current scope of groundwater monitoring based on the access availability and capability of each monitoring well in existence as of the date of enactment of this Act; and (ii) develop and carry out a monitoring plan that maximizes coverage for each major aquifer system that is located in the United States, and (C) prior to initiating any specific monitoring activities within a State after the date of enactment of this Act, consult and coordinate with the applicable State water-resource agency with jurisdiction over the aquifer that is the subject of the monitoring activities, and comply with all applicable laws (including regulations) of the State.

**Section 9a** ESTABLISHMENT. The Secretary, in coordination with the Advisory Committee and State and local water-resource agencies, shall establish a national assessment program to be known as the “national water availability and use assessment program”

### **Presidential Memorandum: Building National Capabilities for Long-Term Drought Resilience**

On March 21, 2016, President Barack Obama signed a Presidential Memorandum on Building National Capabilities for Long-Term Drought Resilience (The White House, 2016a). Among other actions, this memorandum institutionalizes the National Drought Resilience Partnership (NDRP), which builds upon the National Integrated Drought Information System, an interagency program led by the Department of Commerce (The White House, 2016). The NDRP was outlined in the President's Climate Action Plan to better coordinate Federal support for drought-related efforts, help communities reduce the impact of current drought events, and prepare for future droughts. In sustaining this focused collaboration, the NDRP provides the Federal Government with a platform that enables locally and regionally driven priorities and needs, to guide coordinated Federal activities.

Although this memorandum and associated action plan (The White House, 2016b) was designed specifically to coordinate Federal Government activities on drought, the focus of that coordination was to be on support to states:

*Sec. 2. Policy. It is the policy of the Federal Government to coordinate and use applicable Federal investments, assets, and expertise to promote drought resilience and complement drought preparedness, planning, and implementation efforts of State, regional, tribal, and local institutions. In addition, where appropriate, the Federal Government shall seek partnerships with such institutions and the private sector in order to increase and diversify our Nation's water resources through the development and deployment of new technologies and improved access to alternative water supplies. Agencies shall also work with State, regional, tribal, and local institutions to support their efforts to maintain and enhance the long-term health and resilience of working lands and ecosystems. In carrying out this memorandum, executive departments and agencies (agencies) shall continue to recognize*

*the primacy of States, regions, tribes, and local water users in building their resilience to drought.*

The Presidential Memorandum action plan (The White House, 2016b) laid out drought resilience goals and actions to meet those goals. The need for participating Federal agencies to communicate, work, coordinate, or collaborate with states, or to gain their input, is highlighted in four of the six goal implementation plans ensuring that the plans efforts are not top-down driven:

- Communicating Drought Risk to Critical Infrastructure - *“Agencies shall communicate with State, regional, tribal, local, and critical infrastructure officials, targeted information about drought risks, including specific risks to critical infrastructure.”*
- Drought Planning and Capacity Building - *“USDA will work with States and tribes to identify rural communities most at risk for compromised drinking-water supplies as a result of drought, including those that are at risk as a result of depleted or contaminated groundwater.”*
- Coordination of Federal Drought Activity - *“USDA-NRCS will encourage Federal agencies to join State, regional, tribal and local partners in drafting project proposals for innovative approaches to enhancing drought resilience on farms, ranches, and private forest lands.”*
- Innovative Water Use, Efficiency, and Technology - *“Convene a workgroup of technical specialists and managers from Federal, State, tribal, local, and academic institutions to identify and promote more efficient agricultural water use. Develop a strategy, with stakeholder input from States and the private sector, to accelerate and improve the deployment of such technologies.”*

### **Bureau of Land Management’s Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners**

This Bureau of Land Management (BLM) guide to relationships and coordination with intergovernmental partners (BLM, 2012) presents agency-specific expectations, goals, and principles of cooperation with other government partners including states. The guide is a “how to” manual focused on collaboration in the development of BLM land use and resource plans, which include water-resource concerns. Although not unique among Federal agencies with water-resource responsibilities, this type of collaboration-specific guidance document is not typical. This review found that Federal Government department or agency-specific guidance or instruction on Federal/State collaboration is generally distributed across multiple rules, policies, and department or agency manuals. As a cooperation-specific guidance publication, the guide serves as a good reference for comparing the positions of a single Federal agency (in this case the BLM) on Federal/State cooperation to those of Western States.

In the guide, Jamie Connell, former BLM Commissioner, wrote that the guidance document was part of continued BLM efforts to establish *“a culture of cooperation, collaboration, and partnership in its land use planning process by promulgating regulations that establish a consistent role for cooperating agencies.”*

It should be noted that the instructions covered BLM behavior with State, local, tribal, and Federal partners and did not typically separate states from the rest of their program partners:

*“... by working closely with our State, local, tribal, and Federal government partners, we improve communication and understanding, identify common goals and objectives, and enhance the quality of our management of the public lands... collaboration with State, tribal, and local governments—as well as with other Federal agencies—should also be standard practice at the BLM for all land use planning and related implementation activities.”*

The guide contains references and excerpts of Department of the Interior and BLM policy statements that define agency and State coordination requirements for land use and resource planning. A selected set of these references and associated instructions are presented below.

- Referencing the Federal Land Policy and Management Act of 1976:

*“In the development and revision of land use plans, the Secretary shall... to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located... considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall... provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands.”*

- From 43 Code of Federal Regulations (CFR)<sup>1</sup> 1610.3-1 (for BLM):

*“In addition to the public involvement prescribed by §1610.2, the following coordination is to be accomplished with other Federal agencies, state and local governments, and federally recognized Indian tribes.... Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Federally recognized Indian tribes, in the development of resource management plans.”*

- From 43 CFR 46.155 (for DOI):

*“The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities.”*

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<sup>1</sup> The Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the Federal Government of the United States.

- From 43 CFR 1610.3-1 (for BLM):

*“Coordination of planning efforts. (b) When developing or revising resource management plans, BLM State Directors and Field Managers will invite eligible Federal agencies, state and local governments, and federally recognized Indian tribes to participate as cooperating agencies.”*

The guide also references the intergovernmental exemption for consultation between BLM and cooperating agencies, including State agencies, from FACA pursuant to the UMRA discussed previously in this review. The guide states that the exemption applies to meetings between Federal officials and elected State, local, or tribal government officials or BLM designated employees with authority to act on their behalf.

Beyond the policy and rule requirements for BLM and State coordination, the guide gives instruction on the objective of meaningful cooperation including

- Gaining early and consistent involvement of partners,
- Incorporating local knowledge of economic, social, and environmental conditions, as well as Federal, State, local, and tribal land use requirements,
- Addressing intergovernmental issues,
- Avoiding duplication of effort, and
- Building relationships of trust and cooperation.

## **Summary of Positions on Federal/State Collaboration: Federal and State Perspectives**

Although the reviewed positions of Western States on water-resource collaboration are numerous and range from defining overarching goals to partnerships with individual agencies, themes on State perspectives and expectations did emerge. These themes can be summarized below generally by the principles gleaned from WGA 2017 Policy Resolution 2017-01 (WGA, 2017a):

- Ensure that Federal/State consultation is substantive, takes place on an early and ongoing basis, and involves both Governors and state regulators.
- Treat State and local governments, as well as their political subdivisions, as co-regulators and partners, not stakeholders, considering State views, expertise and science in the development of any Federal action impacting State authority.
- Clarify definitions in key enabling statutes to better define Federal/State Government consultation.
- Consult with states before Federal action, throughout the pre-publication and publication stages of rulemaking, before the adoption of final rules, and during implementation of programs and policies.

On the Federal Government side, the review of selected documents found similar intent and, in many cases, similar expectations or requirements for coordination on water-resource issues. Indeed, a

substantial portion of the language in reviewed Federal documents discussing Federal/State coordination tracks, in concept, with Western State positions and expectations. A brief crosswalk between the list of Western State collaboration principles described in the bullets above and requirements and instructions on Federal/State relations found in the review of Federal documents is provided below as examples of this correlation.

- Ensure that Federal/State consultation is substantive, takes place on an early and ongoing basis, and involves both Governors and State regulators.
  - From Executive Order 13132 - *“Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.”*
  - From the Unfunded Mandate Reform Act - *“...develop an effective process to permit elected officers of state, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.”*
  - From the Unfunded Mandate Reform Act - *“Intergovernmental consultation should take place as early in the regulatory process as possible. Except where the need for immediate agency action precludes prior consultation, consultation should occur before publication of the notice of proposed rulemaking or other regulatory action proposing a significant Federal intergovernmental mandate.”*
  - From the Federal Land Policy and Management Act of 1976 - *“In implementing this directive, the Secretary shall... provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands.”*
  - From the Bureau of Land Management’s Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners - *“Gain early and consistent involvement of state partners.”*
  
- Treat State and local governments, as well as their political subdivisions, as co-regulators and partners, not stakeholders, taking into account state views, expertise and science in the development of any Federal Government action impacting state authority.
  - From Executive Order 13132 - *“States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories” EO 13132§ 2(e).*
  - From the Unfunded Mandate Reform Act - *“...It is important that this intergovernmental consultation process not only achieves meaningful input, but also builds a better understanding among Federal, State, local, and tribal [parties].”*
  - From the Presidential Memorandum: Building National Capabilities for Long-Term Drought Resilience - *“Agencies shall also work with State, regional, tribal, and local institutions to support their efforts to maintain and enhance the long-term health and resilience of working lands and ecosystems. In carrying out this memorandum, executive*

*departments and agencies (agencies) shall continue to recognize the primacy of States, regions, tribes, and local water users in building their resilience to drought.”*

- From the Presidential Memorandum: Building National Capabilities for Long-Term Drought Resilience Innovative Water Use, Efficiency, and Technology - “Convene a workgroup of technical specialists and managers from Federal, State, tribal, local, and academic institutions to identify and promote more efficient agricultural water use. Develop a strategy, with stakeholder input from States and the private sector, to accelerate and improve the deployment of such technologies.”
  - From the Bureau of Land Management’s Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners - “*Incorporate local knowledge of economic, social, and environmental conditions, as well as Federal, State, local, and tribal land use requirements.*”
- Consult with states before Federal action, throughout the pre-publication and publication stages of rulemaking, before the adoption of final rules, and during implementation of programs and policies.
    - From the Unfunded Mandate Reform Act – “[Intergovernmental] *Consultation should continue after publication of the regulatory action initiating the proposal. Except in exceptional circumstances where the need for immediate action precludes prior consultation, consultation must occur prior to the formal promulgation in final form of the regulatory action.*”

The reviewed Federal documents indicated recognition of the critical nature of State roles in water planning, allocation, and preservation in water-resource policies and directives. The review of Western State positions, however, indicates that despite formal recognition of the need for collaboration, gaps remained, in some cases, between expected levels of collaboration and what actually occurred.

Several reviewed Federal Government reports identified challenges in meeting defined coordination requirements and partner expectations and provided insight into the possible reasons for those challenges (BLM, 2012; Greenley and Langsdale, 2015). In 2014 the U.S. Army Corps of Engineers (USACE), through their Institute for Water Resources<sup>2</sup>, conducted an assessment of USACE capacity to collaborate with stakeholders (including State governments) on water-resource planning and management (Greenley and Langsdale, 2015). The report looked at the analysis of results of both a quantitative survey and regional workshops held to define challenges and next steps to increase the collaborative capacity within the USACE. The report notes that, overall, a strong majority of USACE

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<sup>2</sup> The Institute for Water Resources (IWR) is a U.S. Army Corps of Engineers (USACE) Field Operating Activity with the purpose of analyzing and anticipating changing water-resources management conditions, and to develop planning methods and analytical tools to address economic, social, institutional, and environmental needs in water resources-planning and policy.

employees used collaboration and appreciate its value to their agency's mission. However, the assessment also indicated that staff charged with understanding and implementing cooperation requirements face implementation challenges in many areas of expected collaboration. Causes of these challenges were identified to include

- Variation in individual skills as well as training in cooperation requirements and opportunities,
- Limited time and financial resources for collaboration efforts,
- Inconsistent support from Senior Leadership, and
- Insufficient guidance and flexibility, including in institutional procedures, to support collaboration.

A review by the BLM (2012) of directions of intergovernmental cooperation in their agency programs cited the additional challenge in their collaboration efforts of integrating the involvement of multiple parties with competing interests and values.

These identified challenges support the proposal that the effectiveness of Federal/State relations can be increased with improved understanding of both Federal and State requirements and expectations for collaboration. Although this review was not exhaustive, compilations of Federal Government requirements and instructions on collaboration that could be used to train on the benefits and opportunities of collaboration were not found other than in the reviewed BLM Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners (2012). More typically, for activities involving water resources, guidance was found in multiple agency-specific manuals and handbooks. It is hoped that this initial-phase review and its associated products will provide a usable resource for both Federal and State managers as they work together on issues of water in the West.

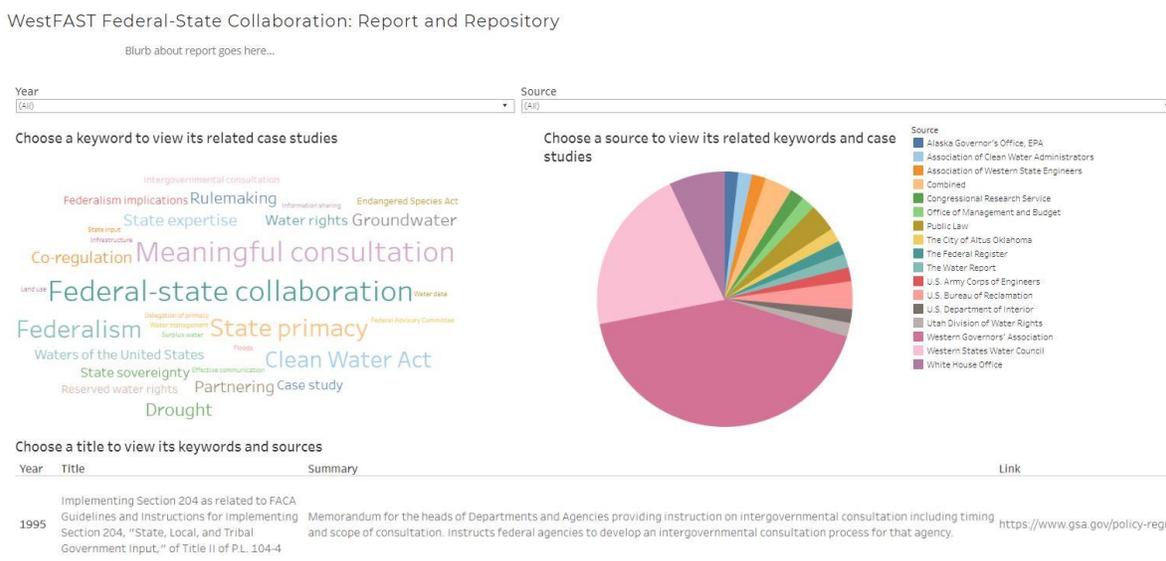
Although this review may be of use as a primer on the positions and expectations of collaboration, it is recommended that compilation of documents and cases of collaboration continue. The WSWC and WestFAST are well positioned to carry on this work. Subsequent phases of review could include conducting case studies of recent and ongoing Federal/State collaboration events to evaluate best practices. The report repository and Federal/State collaboration event survey tool described in this report could be used in the future by the WSWC and WestFAST for these purposes.

## **Archival of Reviewed Position and Policy Documents**

Reviewed documents have been cataloged in a document repository—the [Federal-State Water Resources Collaboration Repository](#)—which can be accessed by Federal and State managers working with western water-resource issues. Repository content includes summaries of key mandates, requirements, principles, guidance, perspectives, expectations and limitations to Federal/State collaboration in various cases of Federal/State engagement. The repository also contains links to the original documents reviewed in this assessment.

The information that comprises the Federal-State Water Resources Collaboration Repository is held in a cloud-computing platform (in this case Google Drive) and is accessible for editing and additional input by

WSWC staff, WestFAST staff, and the author. This allows for collaborative data entry and updating as further documents are discovered and reviewed. The dashboard that allows the interested user to sort the repository contents was created using Tableau, a business intelligence and visualization software tool. Tableau has authenticated itself against (been given permission to access) the data repository on the cloud and can update itself automatically on a regular basis depending on data update frequency. The dashboard allows the user to sort for documents by title, relevant year, the case source type (e.g., State or Federal Government agency), the participating agencies, and keywords/topics addressed. The results show the document, its summary, and a hyperlink to the complete, original document and any additional resources of information. Currently, there are 58 entries in the repository, which would be difficult to parse through in a report or other textual document. The repository search functionality makes this kind of investigation very easy via simple search parameters to find documents of interest and related information. WSWC and WestFAST may allow for submissions to the repository via their website at a future date. The cloud platform and dashboard will be served and maintained by WSWC and WestFAST with access via their home pages.



Screen shot of the WestFAST Federal-State Collaboration Report Repository dashboard for document search and access

## Survey Tool to Assess Best Practices In and Obstacles To Effective Federal/State Collaboration

### Background

The review captured documentation of Federal/State collaboration cases described as successful by event participants. Several of these events were reviewed as part of the final component of this work—the development of a survey tool to aid in evaluating best practices and potential benefits of Federal/State collaboration. As summarized in previous sections of this report, both Federal and State entities have expressed an understanding of the importance of meaningful consultation and

cooperation in dealing with Western State resource issues and management. However, Western States continue to communicate concern over perceived deficiencies in the collaborative process despite the stated positive intentions of their Federal partners. Federal agencies, specifically those represented in WestFAST, have expressed a desire to explore the attributes of collaboration events, including benefits of, and deterrents to collaboration, and partner expectations (WestFAST, 2017). This section describes the development of a survey tool to assist with this goal.

Three collaborative events were captured in this review for consideration by WestFAST in future case studies of Federal/State collaboration:

1. Arches National Park Water Rights Agreement: Negotiations by the Federal Government reserved water rights<sup>3</sup> for Arches National Park including recognizing instream and in-situ use as well as administrative uses began in 1999. States have, historically, taken different approaches to dealing with reserved water rights including litigation with the Federal Government or with tribes: The State of Utah chose negotiation as a preferred method for quantifying reserved water rights. Deterrents to the success of this collaborative negotiation approach included: (1) a lack of understanding of the relationship between Federal Government reserved water rights and State appropriated water rights; (2) that the reserved water right in the case of Arches National Park was un-quantified; and (3) the time and effort required to solve a complex water-right issue. Despite these obstacles, participants claimed the collaboration a success, citing the use of good science, a willingness to cooperate, and an open public process needed attributes leading to a “win-win” result that met the needs of all parties including water users (Greer and Johnson, 2015).
2. The Missouri Headwaters Drought Resilience Demonstration Project: This project was launched in July 2014, to demonstrate how Federal agencies can best support a State strategy to build long-term drought resilience (National Drought Resilience Partnership (NDRP), 2017). The project leveraged Federal and State resources and engaged communities in the development and implementation of local watershed drought resilience plans. The EPA, as the point of contact to the NDRP, facilitated connections with the Natural Resources Conservation Service, the USFS, Federal Emergency Management Agency (FEMA), NOAA/National Integrated Drought Information System (NIDIS), the USACE, the USFWS, Reclamation, BLM, and the USGS. More than 20 local watershed groups and conservation districts contributed to the project and more than 14 local, regional and national NGOs are actively participating in delivering government drought mitigation tools and resources to the watershed stakeholders in direct contact with the landscape. This Federal/State collaboration has led to the development of a drought resilience work plan that identifies specific objectives and tasks.

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<sup>3</sup> Water rights reserved to ensure that Indian reservations and public lands set aside by the Federal Government would have sufficient water to fulfill the purposes for which they were established. The Federal Government is held to have reserved water rights sufficient for the primary purpose for which the land (National park, forests, Indian Reservation) was withdrawn from the public domain (Water Education Foundation, 2019).

3. Southwest Oklahoma Water Action Planning: With the goal of building resilience against the Southwest Oklahoma Region’s historic vulnerability to drought, local leaders and regional stakeholders began development in 2013, of the Southwest Oklahoma Water Action Plan (SWAP). The long-term plan, completed in 2014, and updated in 2015 (The City of Altus, 2016), revealed that the region is largely over-reliant on limited surface water and offered a set of strategies to augment supplies, balance water-management schemes, and begin infrastructure improvements to improve water efficiency. In 2016, the Oklahoma Water Resources Board reached out to the NDRP through WestFAST to request the Southwest Oklahoma region be included in a drought resilience demonstration/collaboration project initially focusing on opportunities to leverage available Federal resources—both technical and financial—for the benefit of SWAP partners (The City of Altus, 2016). The subsequent meeting of Federal and State partners on the requested collaboration resulted in identification of eight distinct action areas, largely consistent with primary SWAP initiatives, on which to focus future Federal assistance. A Federal Government lead was appointed to each area to serve as a point of contact and assist the local and State stakeholders in coordinating with other Federal agencies. Associated deliverables were included with each action area. WestFAST is in the process of developing a companion document to the SWAP that will identify lessons learned and specific methods to foster the ability to replicate this work in other states and/or regions or basins. WestFAST and NDRP agencies, and the state of Oklahoma collectively offer dozens of additional funding programs, as well as expert technical support, that could potentially assist SWAP partners in maximizing the region’s drought resiliency.

### Case Study Survey Tool

A survey tool was developed to aid in assessing best practices and potential benefits of proactive Federal/State collaboration. The tool queries for attitudes and opinions of case participants concerning the nature and benefits of proactive collaboration between the Federal Government and State managing partners and allows for the evaluation of participants perspectives on the success of the collaboration event. Participant knowledge and understanding of defined collaboration opportunities and limitations, and their expectations of the level of collaboration that should take place are also considered in the tool.

A base set of survey queries was developed (see appendix B) targeting the following areas:

1. Awareness and level of understanding of Federal/State collaboration opportunities and constraints.
2. Expectations of collaboration going into the process.
3. Perceived level of success—satisfaction with the process and resulting product.
4. Best practices supporting and barriers to success.
5. Opinion on the primary and secondary benefits of the collaboration.

It is understood that the nature and scope of collaboration events that this tool could be applied to will be different for each studied case. Thus, the assessment of the level and type of proactive collaboration, as with the assessment of best practices supporting satisfaction or success using this instrument, would be purely qualitative. Irrespective of this limitation, the survey approach, if applied to numerous cases over time, should be able to be used to evaluate possible common collaboration attributes and practices (best practices) that correlate to perceived success. Thus, the use of this tool in a case study approach is designed to provide for an analysis of experiences (Fink, 2003) within the framework of the selected class of events. The base set of survey questions can be refined to meet the scope and nature of each survey event. The base question set, however, was designed to be transferable to different types of events with minimal revision to preserve consistency in the survey approach.

The survey tool is designed to be used with a case study approach that describes the collaboration activity and process, and any administrative guidelines or limitations on participating Federal and State agencies. It is recommended that the documentation of the collaboration event include a description of the characteristics, magnitude, and timing of Federal/State interaction during the process.

### **Survey Tool Test Case: Southwestern Oklahoma Water Planning**

The third collaboration event described above—Southwest Oklahoma Water Action Plan—was selected to test the survey tool. This single application of the survey was done to assist WestFAST in understanding the ability of the tool to assess targeted attributes of the event and its participants (above list) and to allow for consideration of any needed changes for use in future case studies. Although only one of the cases reviewed in this project was used to evaluate the assessment tool, materials describing all reviewed cases are contained in the document repository and the survey tool could be applied to those cases in the future.

The Survey was delivered to 22 event participants by the Western States Water Council Executive Director via email with a description of need and purpose and 8 participants responded. Although response was limited, survey results (delivered to WestFAST) compiled information relevant to all six target attributes. Results indicated a range of previous experience in collaboration as well as in expectations of the benefits and productivity of the action. Parts of the survey requesting written explanation for certain responses also revealed varying definitions of what collaboration was among the event participants. All participants responded positively to questions of the secondary benefits of creating working relationships that would facilitate future collaboration with participating entities.

The results of the survey will be reviewed by WestFAST members for use in future case studies.

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## Appendix A: Reviewed Reports List and Summaries

### Background

This appendix lists and summarizes all documents reviewed in this work. Document attributes and summaries contained here were used to populate the [WestFAST Federal-State Collaboration Report Repository](#).

### Federal Documents

**Implementing Section 204 as related to FACA Guidelines and Instructions for Implementing Section 204, "State, Local, and Tribal Government Input," of Title II of P.L. 104-4 (1995) -**

<https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/legislation-and-regulations/implementing-section-204-as-related-to-faca>

Year Published: 1995

Source(s): Office of the President, Office of Management and Budget

Keywords: State expertise, meaningful consultation, rulemaking, intergovernmental consultation

Summary: Memorandum for the heads of departments and agencies providing instruction on intergovernmental consultation including timing and scope of consultation. Instructs Federal agencies to develop an intergovernmental consultation process for that agency.

**Unfunded Mandates Reform Act (UMRA) of 1995 -** <https://www.govinfo.gov/content/pkg/PLAW-104publ4/pdf/PLAW-104publ4.pdf>

Year Published: 1995

Sources: Federal Government

Keywords: Federal-State collaboration

Summary: Limits the number of unfunded Federal mandates imposed on State, local, and tribal governments. In addition, UMRA was intended to strengthen the partnership and communications between the Federal Government and its State, local, and tribal counterparts. provides a critical exemption to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App, in order to promote the free communication between the Federal Government and State, local, and tribal governments. Generally, it permits Federal officials to speak with their State, local, and tribal counterparts without implicating the FACA as long as communications meet several criteria.

**Executive Order 13132: Federalism** - <https://www.govinfo.gov/content/pkg/FR-1999-08-10/pdf/99-20729.pdf>

Year Published: 1999

Source(s): The White House

Keywords: federalism, Federal/State collaboration

Summary: The Order seeks “to ensure that the principles of federalism established by the Framers guide the executive departments in the formulation and implementation of policies.” After emphasizing key federalism principles and policymaking criteria, the Order designates specific procedures for intergovernmental consultation and calls for more flexible issuance of government waivers.

**The Federal Land Policy and Management Act (As Amended):**

<https://www.blm.gov/or/regulations/files/FLPMA.pdf>

Year Published: 2001

Source(s): Bureau of Land Management

Keywords: Federal-State collaboration

Summary: Compilation by the U.S. Bureau of Land Management (BLM) of United States Federal Government law that governs the way in which the public lands administered by the BLM are managed. The law was enacted in 1976 by the 94th Congress and is found in the United States Code under Title 43. Discusses requirements and expectations of coordination with states during planning including the management of public lands in a manner to protect the quality of water resources.

**Federal Water Pollution Control Act - The Clean Water Act, [As Amended Through P.L. 107–303, November 27, 2002]** - <https://www.epa.gov/sites/production/files/2017-08/documents/federal-water-pollution-control-act-508full.pdf>

Year: 2002

Source(s): Federal Government

Keywords: Clean Water Act, Federal-State Collaboration, groundwater

Summary: Primary Federal Government law governing water pollution. Its objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources (though it does not enable the control of nonpoint sources); recognizing the responsibilities of the states in addressing pollution and providing assistance to states to do so, including funding for publicly owned treatment works for the improvement of wastewater treatment; and maintaining the integrity of wetlands. Contains requirements and expectations of Federal/State collaboration in development and implementation of CWA program.

**Federal Advisory Committees: A Primer - CRS Report to Congress -**

<https://fas.org/sgp/crs/misc/RL30260.pdf>

Year: 2007

Source(s): Congressional Research Service

Keywords: Federal Advisory Committees

Summary: Report sets forth definitions and requirements for creating commissions as required by the Federal Advisory Committee Act (FACA). Congressional enactment of FACA established the first requirements for the management and oversight of Federal Government advisory committees to ensure impartial and relevant expertise. FACA requires that the advice provided by advisory committees be objective and accessible to the public, and that committee membership be “fairly balanced in terms of the points of view presented.” Pursuant to FACA requirements, the General Services Administration (GSA) maintains and administers management guidelines for commissions. The Unfunded Mandate Act (1995, summarized in this repository) provides a critical exemption to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App, in order to promote the free communication between the Federal Government and state, local, and tribal governments. Generally, it permits Federal Government officials to speak with their state, local, and tribal counterparts without implicating the FACA as long as the communication meets certain requirements.

**U.S. Bureau of Land Management, 2012, A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners -**

[https://www.ntc.blm.gov/krc/uploads/623/BLM\\_DeskGuide\\_CA\\_Relationships\\_2012.pdf](https://www.ntc.blm.gov/krc/uploads/623/BLM_DeskGuide_CA_Relationships_2012.pdf)

Year Published: 2012

Source(s): U.S. Bureau of Land Management

Keywords: Federal/State collaboration

Summary: A “how to” publication that for BLM managers and staff treating collaborative efforts with State, local, and tribal governments and other Federal agencies to recognize common goals and achieve balanced approaches to multiple use management across the public lands. The guide includes lists of statutory, departmental, and agency requirements and instructions on collaborative roles of BLM managers and staff. Discusses challenges to partner coordination.

**The State of Collaboration in the Corps: A Field Perspective in 2014 (2015-CPC-1) -**

<https://www.iwr.usace.army.mil/Portals/70/docs/cpc/Added%202016/The%20State%20of%20Collaboration%20in%20the%20Corps%20-%20A%20Field%20Perspective%20in%202014.pdf>

Year: 2015

Sources: US Army Corps of Engineers

Keywords: Federal-State collaboration, case studies

Summary: Assessment the U.S. Army Corps of Engineers’ (Corps) capacity to collaborate with stakeholders on water resources planning and management. Elicited suggestions for capacity enhancements from the field and resulted in a set of priority recommendations for enhancing the Corps’

collaborative capacity. The recommendations focus on enabling Corps staff to build and maintain effective relationships within and outside the agency. Specific recommendations cover the range of investments needed to build capacity: skills training, leadership support, funding, and technical tools.

**Presidential Memorandum: Building National Capabilities for Long-Term Drought Resilience -**  
<https://obamawhitehouse.archives.gov/the-press-office/2016/03/21/presidential-memorandum-building-national-capabilities-long-term-drought>

Year Published: 2016

Source(s): The White House

Keywords: drought, Federal-State collaboration

Summary: The Memorandum institutionalizes the National Drought Resilience Partnership (NDRP), which builds upon the National Integrated Drought Information System, an interagency program led by the Department of Commerce. The NDRP was outlined in the President's Climate Action Plan to better coordinate Federal support for drought-related efforts, help communities reduce the impact of current drought events, and prepare for future droughts. In sustaining this focused collaboration, the NDRP will provide the Federal Government with a lasting platform that enables locally and regionally driven priorities and needs to guide coordinated Federal activities.

**Long-Term Drought Resilience Federal Action Plan of the National Drought Resilience Partnership -**  
[https://obamawhitehouse.archives.gov/sites/default/files/docs/drought\\_resilience\\_action\\_plan\\_2016\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/drought_resilience_action_plan_2016_final.pdf)

Year: 2016

Source(s): Federal Government, The White House

Keywords: Drought

Summary: Action Plan outlining ways in which member Federal departments and agencies of the National Drought Resilience Partnership can use existing resources to take additional steps to work with State, regional, tribal, and local partners to respond to drought and lay the foundation for long-term resilience within existing authorities. The Action Plan brings together a wide range of initiatives and concepts to build stronger drought-resilience capabilities.

**Executive Order 13777 of February 24, 2017 Enforcing the Regulatory Reform Agenda -**  
<https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda>

Year: 2017

Source(s): Presidential Documents, Federal Register

Keywords: State expertise

Summary: Policy and instruction given on the implementing and enforcing of regulatory reform to lower regulatory burdens on the American people. Includes instructions for the Federal agency evaluation of existing regulations to seek input and other assistance, as permitted by law, from entities significantly

affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

**Secretary of the Interior September 10, 2018 Memorandum: State Fish and Wildlife Management Authority on Department, of the Interior Lands and Waters -**

[https://www.peer.org/assets/docs/doi/9\\_11\\_18\\_Zinke\\_memo.pdf](https://www.peer.org/assets/docs/doi/9_11_18_Zinke_memo.pdf)

Year: 2018

Source(s): The Department of the Interior

Key words: Federal-State collaboration

Summary: Reaffirms authority of the State to exercise their broad trustee and police powers as stewards of the Nation's fish and wildlife species on public lands and waters under the jurisdiction of the Department. Discusses that the regulation regarding fish and wildlife are numerous and include both Federal and State administrative structures and requires the cooperation of the various States and the Federal Government. States that the Department of the Interior recognizes States as the first-line authorities for fish and wildlife management and expresses commitment to defer to the States in this regard except as otherwise required by Federal law. Request Bureaus, with time lines, to review all regulation, policies, and guidance that pertains to the conservation and management of fish and wildlife species on lands and water under their jurisdiction.

## **State Documents**

**August 21, 2013 Letter from WGA to Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works) -**

[http://westgov.org/images/editor/Corps\\_Letter\\_surplus\\_water-FINAL.pdf](http://westgov.org/images/editor/Corps_Letter_surplus_water-FINAL.pdf)

Year Published: 2013

Source(s): Western Governors' Association

Keywords: rulemaking, surplus waters, meaningful consultation

Summary: Recommends that the unique hydrology of the West and west's legal doctrine be considered by the U.S. Army Corps of Engineers during rulemaking. Expresses concern that the Corps has not adequately engaged the states in the development of the surplus water rule draft and urges initiation of substantive dialog with state.

**August 21, 2014 WGA Letter to Ms. Carolyn Holbrook, Recreation, Heritage and Volunteer Resources Staff United States Forest Service - FS\_FRDOC\_0001-1886: Ski Area Water Rights on NFS Lands - <http://westgov.org/letters/comments-wga-on-water-rights-for-ski-areas-on-national-forest-system-lands>**

Year Published: 2014

Source(s): Western Governors' Association

Keywords: state primacy, meaningful consultation

Summary: Submitted comments that WGA believes the topic action impacts state authority to manage water. Requests greater clarification of terminology used in the proposed rule. Urges the Forest Service to consult with states in a "meaningful way prior to proposing future directives or rules." Notes that the "proposed directive, like many other proposals from the USFS and other Federal Government agencies, was developed without any state consultation of which WGA was aware." Recommends that for similar proposals in the future, the "USFS consult with the states prior to publishing documents in the Federal Register." Suggest such consultation will help the Service to "identify and avoid sticking points in proposed directives and rules." Invites the USFS to work through WGA, the Western States Water Council, and their member states to facilitate dialogue on ways to improve this topic proposal and any future proposed directive.

**August 21, 2014 WGA Letter to USDA Forest Service - BMP Directive Comments - FS-2014-0003-0001-Proposed Directives for National Best Management Practices for Water Quality Protection on National Forest System Lands - [http://westgov.org/images/editor/Western\\_Governors\\_COMMENTS\\_USFS\\_BMPs\\_final.pdf](http://westgov.org/images/editor/Western_Governors_COMMENTS_USFS_BMPs_final.pdf)**

Year Published: 2014

Source(s): Western Governors' Association

Keywords: state primacy, Clean Water Act

Summary: Statement on a proposed addition to the USFS Manual and Handbook directives for national best management practices (BMPs) - that it potentially impacts state authority to manage water, the Western Governors' Association (WGA) submits the following comments - and, thus, WGA provides recommendations including recognition of state authority in water quality administration under Clean Water Act.

**July 2, 2014 WGA Letter to Tom Vilsack, Secretary of Agriculture - U.S. Forest Service's Proposed Directive on Groundwater Resources Management**

[http://westgov.org/images/editor/LTR\\_and\\_questions\\_USFS\\_Groundwater\\_Directive\\_Sec.\\_Vilsack.final.pdf](http://westgov.org/images/editor/LTR_and_questions_USFS_Groundwater_Directive_Sec._Vilsack.final.pdf)

Year Published: 2014

Source(s): Western Governors Association

Keywords: groundwater, partnering, meaningful consultation

Summary: Discusses Western-State position on states' authority for allocating, administering, protecting and developing groundwater resources, and that Western States are primarily responsible for water supply planning within their boundaries. Presents concerns over USFS's identification of states as "potentially affected parties," and an assertion that the USFS's proposed actions would "not have substantial direct effects on the states." Urges USFS to "seek authentic partnership with the states to achieve appropriate policies that reflect both the legal division of power and the on-the-ground realities of the region."

**March 25, 2014 Letter from WGA to Gina McCarthy, EPA Administrator and Jo-Ellen Darcy Assistant Secretary of the Army (Civil Works) - <http://westgov.org/letters/letter-clean-water-act-jurisdiction-rulemaking>**

Year Published: 2014

Source(s): Western Governors Association

Keywords: Clean Water Act, rulemaking, meaningful consultation

Summary: Presents concerns that rulemaking on jurisdiction criteria of the Clean Water Act was developed without sufficient consultation with states. Notes Western-State presumed status as co-regulators and suggests that states should be fully consulted and engaged in any process that may affect the management of their waters. Notes EPA and USACE briefings on the rulemaking but states that WGA believes these efforts lacked sufficient detail to constitute substantive consultation. Urges both EPA and the Corps to engage states as authentic partners in the management of Western waters.

**Memorandum of Understanding Between the Western Governors' Association and the National Oceanic and Atmospheric Administration Collaboration on Drought, Flooding, and Wildfire Preparedness: Sharing Information and Building Resilience in Planning for Extreme Events - June 9, 2014 - <https://www.esrl.noaa.gov/psd/news/2014/pdf/MOU-WGA-NOAA2014.pdf>**

Year Published: 2014

Source(s): Western Governors' Association, National Oceanic and Atmospheric Administration

Keywords: drought, floods, water data, Federal-State collaboration

Summary: Presents Western-State position that good policymaking to address the impacts of drought, flooding, and extreme weather events requires high quality data, information, and analysis. References December 2013, the Western Governors policy resolution 14-03, Water Resource Management in the West, which highlights the importance of planning resources for drought and other extreme events.

Additionally, the Governors use the resolution to encourage Federal Government agencies to partner with states in the collection, coordination, and effective dissemination of drought-related data, information, and analysis. States the purpose of this Memorandum of Understanding (MOU) is to “improve the development, coordination and dissemination of drought and extreme weather data, information, and analysis – as well as preparedness and planning tools and innovations – in order to support the resource management decisions of Western States. Provides Objectives and Implementation.”

**November 14, 2014 WGA Letter Gina McCarthy Administrator U.S. Environmental Protection Agency and Jo-Ellen Darcy Assistant Secretary of the Army (Civil Works) - Docket ID No. EPA-HQ-OW-2011-0880 – Definition of “Waters of the United States” Under the Clean Water Act - [http://westgov.org/images/editor/LTR\\_Waters\\_of\\_the\\_US\\_Comments\\_Final\\_1.pdf](http://westgov.org/images/editor/LTR_Waters_of_the_US_Comments_Final_1.pdf)**

Year Published: 2014

Source(s): Western Governors’ Association

Keywords: Clean Water Act, co-regulation, state primacy

Summary: Communicates that states are the primary authority for allocating, administering, protecting and developing water resources and are primarily responsible for water supply planning within their boundaries. States that it is “imperative that any policies developed by EPA and the Corps affecting water resources be crafted in a manner consistent with state laws governing water allocation and water quality.” Discussed Western State “unanswered request” for 180-day extensions to the comment period to allow states the opportunity for sufficient analysis of the proposed rule’s potential implications for water management. Discusses Western State status as co-regulators and that states should be fully consulted and engaged in any process that may affect the management of state waters. Specifically, suggests that agencies should engage with the states in the earliest stages of rule development rather than after their publication for public comment.

**October 2, 2014 WGA Letter to USDA Forest Service Attn: Elizabeth Berger —WFWARP - WGA Comments on FS-2014-0001: Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560 - <http://westgov.org/letters/comments-usfs-proposed-directive-on-groundwater-resource-management>**

Year Published: 2014

Source(s): Western Governors’ Association

Keywords: groundwater, water rights, state primacy, meaningful consultation

Summary: Comments on USFS proposed proposed U.S. Forest Service’s (USFS) Directive on Groundwater Resource Management, published in the Federal Register for public comment. Recommends USFS consider and recognize States’ Exclusive Authority over Groundwater Management. Presents Western Governors’ concerns that the proposed directive will “lead the USFS to make decisions and place stipulations on proposed actions on NFS lands based on the quantity of water withdrawn with a state-issued water right.” Also presents concerns that the proposed directive is the Service’s rebuttable presumption that surface water and groundwater are hydraulically connected, regardless of whether

state law treats these resources separately (Sections 2560.03-2 and 2561-1). Discusses lack of state consultation noting that the USFS did not “reach out to WGA or any state agencies of which WGA staff is aware in advance of developing and publishing the proposed directive.”

**October 3, 2014 WSWC Letter to Tom Tidwell, Chief U.S. Forest Service - Proposed USFS Directive on Groundwater Resources: the Forest Service Manual 2560** [http://www.westernstateswater.org/wp-content/uploads/2012/10/372\\_WSWC\\_Comments-on-USFS-Proposed-Directive-on-GW-Resource-Mngmt\\_2014Oct3\\_FINAL-combined.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/372_WSWC_Comments-on-USFS-Proposed-Directive-on-GW-Resource-Mngmt_2014Oct3_FINAL-combined.pdf)

Year Published: 2014

Source(s): Western States Water Council

Keywords: groundwater, state primacy, federalism, meaningful consultation

Summary: Provides comments on the proposed U.S. Forest Service’s (USFS) Directive on Groundwater Resource Management, published in the Federal Register for public comment. Presents Western State concerns over the “lack of substantive state participation in the development of the directive, especially given that the States have primary, often exclusive authority, over the protection, development and management of waters within their boundaries, including surface waters arising on, and flowing across USFS lands, and groundwater below those lands.” Recommends that USFS partner with States to identify and address any USFS needs on the issue and references the existing compact between the State of Montana and USFS, as well as a Memorandum of Understanding between USFS and the State of Wyoming, as examples of appropriate options that may be emulated by USFS in other States. Lists principal technical and legal issues Western states have with the proposed Directive and recommends that the USFS “work with Western States to identify and resolve problems which the directive is intended to address.”

**Resolution of the Western States Water Council regarding Clean Water Act Jurisdiction, July 18, 2014 (#369)** - [http://www.westernstateswater.org/wp-content/uploads/2012/10/369\\_WSWC-CWA-Jurisdiction-Resolution\\_2014July18.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/369_WSWC-CWA-Jurisdiction-Resolution_2014July18.pdf)

Year Published: 2014

Source(s): Western States Water Council

Keywords: federalism, co-regulation, meaningful consultation, partnering, state expertise

Summary: States Western-State position that the “CWA is built upon the principle of cooperative federalism” in which Congress intended the states and responsible Federal Government agencies to implement the CWA “as partners, delegating co-regulator authority to the states” - and that states are “best positioned to manage the water within their borders because of their on-the-ground knowledge.” References section 101(g) to that provides that the primary and exclusive authority of each state to “allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by the CWA. Discusses Western States’ position that “as co-regulators, states are separate and apart from the general public, and deserve a unique audience with the Federal Government in the development and implementation of any Federal Government effort to clarify or redefine CWA jurisdiction.” Notes that “information-sharing does not equate to meaningful consultation, and the

uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement Federal Government CWA jurisdiction efforts in authentic partnership with the states.” Recommends that any Federal Government effort in regard to clarifying CWA jurisdiction should include “robust and meaningful state participation and consultation in its development and implementation.”

**Western Governors’ Association Policy Resolution 2014-09 - Respecting State Authority and Expertise**  
- <http://westgov.org/letters/respecting-state-authority-and-expertise>

Year Published: 2014

Source: Western Governors’ Association

Key Words: federalism, delegation of primacy, meaningful consultation, rulemaking

Summary: Discusses state expectations of the Federal/State partnership in Federal Government programs in which the Federal Government has provided for the delegation to states of authority for certain program responsibilities. Notes the their perceived general weakening of the Federal/State partnership in resource management over time. States expectations of meaningful and substantial state involvement in the development, prioritization and implementation of Federal Government environmental statutes, policies, rules, programs. Recommends that Federal agencies take into account state data and expertise in development and analysis of underlying science which serves as the legal basis for Federal Government regulatory action - and engage in early (pre-rulemaking) consultation with Governors and state regulators.

**April 17, 2015 Western States Water Council Position Statement on State Primacy Over Groundwater (#380)** - [http://www.westernstateswater.org/wp-content/uploads/2012/10/380\\_WSWC-Position-on-State-Primacy-over-Groundwater\\_2015April17-1.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/380_WSWC-Position-on-State-Primacy-over-Groundwater_2015April17-1.pdf)

Year Published: 2015

Source(s): Western States Water Council

Keywords: groundwater, water rights, reserved water rights, Clean Water Act, Endangered Species Act

Summary: Presents Western State position that “states have exclusive authority over the allocation and administration of rights to the use of the groundwater located within their borders” and that “Federal Government agencies should work cooperatively with appropriate state agencies and officials to address Federal Government needs involving groundwater through state laws and authorities.” Notes that Western States are in the “best position to protect groundwater quality and allow for the orderly and rational and administration of the resource through state laws and regulations that are specific to their individual circumstances.”

**Adopted Western States Water Council Vision on Water, July 10, 2015 (#384) -**  
[http://www.westernstateswater.org/wp-content/uploads/2012/10/383\\_Vision-on-Water\\_2015July10.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/383_Vision-on-Water_2015July10.pdf)

Year Published: 2015

Source(s): Western States Water Council

Keywords: Federal-State collaboration, state primacy

Summary: Provides and promotes vision statements on, a needed collaborative, cooperative effort among states and stakeholders that “transcends political and geographical boundaries.” Cites State primacy in water resource management as “fundamental to a sustainable water future.” Recommends that the “Federal Government should streamline regulatory burdens and support implementation of state water plans and state water management.” Recommends an integrated and collaborative approach to water resource management and a “cooperation among stakeholders at all levels and agencies of government that recognizes and respects national, regional, state, local and tribal differences in values related to water resources and that supports decision-making at the lowest practicable level.”

**November 24, 2015 WGA Letter to Lisa Murkowski Chairman Senate Committee on Energy and Natural Resources and Maria Cantwell Ranking Member Senate Committee on Energy and Natural Resources - Western Drought Legislation -**

[http://westgov.org/images/editor/LTR\\_Drought\\_Legislation\\_FINAL.pdf](http://westgov.org/images/editor/LTR_Drought_Legislation_FINAL.pdf)

Year Published: 2015

Source(s): Western Governors’ Association

Keywords: drought, state expertise

Summary: Conveys the position of Western Governors on water resources management and proposed drought legislation. States that WGA is a resource to the process in finding requested “integrated and basin-scale approaches that take into account all needs within a watershed [and] are locally-driven solutions – collaborative and consensus-based.” Recommends several policy solutions for the Senate committee to consider.

**United States House of Representatives Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies Public Witness Hearing Testimony of James D. Ogsbury, Executive Director Western Governors' Association March 18, 2015 -** <https://oversight.house.gov/wp-content/uploads/2018/02/Western-Governors-Association-Statement.pdf>

Year Published: 2015

Source(s): Western Governors’ Association

Keywords: drought, partnering, groundwater

Summary: Discusses the West’s exceptional drought history. Notes “certain tension between state and Federal Governments” in working on water issues but also notes that it is clear that “different layers of

government must have a close and productive working relationship if our citizens are to prosper and thrive.” States WGA belief that “...cooperation is only possible when states are regarded as full and equal partners of the Federal Government in the development and execution of programs for which both have responsibility.” States that “State and Federal Government cooperation – from data sharing to land management responsibilities – is critical to our understanding and response to these devastating drought conditions.” Citing specific acts and policies states that “states should be full and equal partners in the implementation of the Endangered Species Act (ESA) and should have the opportunity to participate in pre-listing and post-listing ESA decisions.”

**Association of Western State Engineers (AWSE) 2016 position statement on Drought Assistance -**  
[https://westernstateengineers.files.wordpress.com/2016/12/drought\\_assistance\\_resolution\\_2016.pdf](https://westernstateengineers.files.wordpress.com/2016/12/drought_assistance_resolution_2016.pdf)

Year Published: 2016

Source(s): Association of Western State Engineers (AWSE)

Keywords: state primacy, Federal-State collaboration, drought

Summary: Position statement that the Federal Government “has a role in providing financial and technical assistance to states with severe to extreme drought impacts”. Includes AWSE position to encourage Federal Government agencies to develop long-term drought management plans for Federal Government projects, in cooperation with states, and to support the state efforts to develop plans for non-Federal Government projects. States AWSE position that the implementation of drought assistance programs and state-plan support “must not insert Federal Government authority into state water law issues or water administration practices,” and that “each state has retained its sovereign authority over water use and administration issues, and the receipt of Federal Government aid does not in any way reduce or abrogate that authority.”

**March 17, 2016 WGA Letter to Mr. Earnest Rawles, Acting Assistant Director Office of Regulatory and Management Services – Directives and Regulations Branch United States Forest Service -**  
[http://westgov.org/images/editor/Forest\\_Service\\_Directives\\_FINAL.pdf](http://westgov.org/images/editor/Forest_Service_Directives_FINAL.pdf)

Year Published: 2016

Source(s): Western Governors’ Association

Keywords: meaningful consultation

Summary: WGA comments on USFS Request for Information Regarding Involving the Public in the Formulation. The Forest Service had indicated intent to move the Directive System away from Administrative Policy Act (APA) § 553 informal rulemaking notice-and-comment procedures to an abbreviated or streamlined process. Governors express concern the prospective shift in Forest Service policy noting that any process that reduces the Forest Service’s responsibility to actively inform the public of its actions represents a retreat from openness and transparency. WGA requests that the Forest Service consult with Governors and State governmental entities with respect to any initiative, proposal or prospective policy impacting state authority or their constituencies.

**December 15, 2016, Combined (WGA and other groups and associations) Letters To President Elect Donald J. Trump, Vice President Elect Mike Pence, Speaker of the House Paul Ryan, and Majority Leader Mitch McConnell on State Federal Relations**

[http://westgov.org/images/editor/Combined\\_State\\_Federal\\_Relationship - FINAL.pdf](http://westgov.org/images/editor/Combined_State_Federal_Relationship_-_FINAL.pdf)

Year Published: 2016

Source(s): Western Governors' Association, Conference of Western Attorneys General, CSG West, Western Interstate Region, and Pacific Northwest Economic Region

Key Words: federalism, state primacy, Federal-State collaboration

Summary: Letter containing a list of federalism principles delivered to the incoming administration (2016) indicating western leaders' willingness to work in "true partnership" with the Federal Government by operating together as "authentic collaborators". Contains an attachment - "Principles to Clarify and Strengthen the State-Federal Relationship" - presenting principles which Western States Governors believe should underpin Federal-State collaboration including in engagements concerning water resources. Principles are presented in the categories (1) federalism, (2) federalism implications, (3) federalism review process, and (4) increasing flexibility for state and local waivers.

**Western States Water Council Resolution regarding Hydraulic Fracturing, July 15,2016 (#393) -**

[http://www.westernstateswater.org/wp-content/uploads/2012/10/393\\_WSWC-Hydraulic-Fracturing-Position\\_2016July15.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/393_WSWC-Hydraulic-Fracturing-Position_2016July15.pdf)

Year Published: 2016

Source(s): Western States Water Council

Keywords: state expertise, state primacy

Summary: Resolves that states have primary and exclusive authority over the allocation and administration of rights to the use of water used in hydraulic fracturing operations. Notes the "have decades of experience, knowledge, and information regulating hydraulic fracturing and other oil and gas activities" and are "best positioned to regulate hydraulic fracturing because of their understanding of regional and local conditions and their ability to tailor regulations to fit the needs of the local environment." Proclaims that it should be resolved that "Federal Government efforts involving hydraulic fracturing, including efforts to study potential adverse impacts on water quantity and quality, should leverage state knowledge, experience, policies, and regulations" and that Western States are in opposition to "any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing."

**Alaska Governor Bill Walker June 19,2017 letter to Scott Pruitt, Administrator Environmental Protection Agency, and Douglas Lamont Senior Official Performing the Duties of the Assistant Secretary of the Army (Civil Works) - Proposed Revision of the “Waters of the United States” (WOTUS) Definition - [https://www.epa.gov/sites/production/files/2017-09/documents/ak-state\\_2017-06-19.pdf](https://www.epa.gov/sites/production/files/2017-09/documents/ak-state_2017-06-19.pdf)**

Year Published: 2017

Source(s): EPA, State of Alaska

Keywords: Clean Water Act, Waters of the United States, cooperative federalism

Summary: Contains comments and recommendations pertaining to the proposed revision of the WOTUS definition. Notes the “uniqueness and complexity” of Alaska’s water resources - many of which are frozen. Expresses appreciation for the emphasis of the Federal Government agencies on “cooperative federalism” in the new rulemaking process. Notes past adversarial positions with the Federal Government in issues of management and development of Alaska natural resources. Notes the Governors hopefulness that the new process “marks the beginning of a “more productive and collaborative relationship.”

**April 19, 2017 WGA to Ryan Zinke Secretary of the U.S. Department of the Interior - [https://westgov.org/images/editor/DOI\\_Reorg\\_FINAL.pdf](https://westgov.org/images/editor/DOI_Reorg_FINAL.pdf)**

Year Published: 2017

Source(s): Western Governors’ Association

Keywords: federalism, Federal-State collaboration

Summary: States Western Governors’ recognition that “each Administration will approach federalism differently and that each state must decide when and where to exercise state authorities in isolation, cooperation, or dissent of Administration policies.” Notes that “both the demarcation between state and Federal Government roles and responsibilities and their execution can vary based on interpretation and the issue at hand” and that this fact makes it of “utmost importance that the Federal Government maintain appropriate cooperation and consultation with states concerning policy development.” States position that such consultation can help ensure that regulations do not infringe on state authority, dampen innovation and impair on-the-ground problem solving. Expresses that the Western Governors’ are in these areas by President Trump’s February 24, 2017 Executive Order (E.O.), Enforcing the Regulatory Reform Agenda, will require Federal Government agencies to critically examine their regulatory processes.

**June 19, 2017 Letter from WGA to Scott Pruitt, Administrator EPA (Request for input on WOTUS – 2018)** [https://www.epa.gov/sites/production/files/2017-09/documents/us-wga\\_2017-06-19.pdf](https://www.epa.gov/sites/production/files/2017-09/documents/us-wga_2017-06-19.pdf)

Year Published: 2017

Source(s): Western Governors' Association

Keywords: Clean Water Act, Waters of the United States, state primacy, meaningful consultation co-regulators, State expertise

Summary: Comments to the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers in response to the agencies' March 6, 2017, Federal Register announcement (82 FR 12532) and request for comments from states, in connection with renewed EPA efforts to promulgate an administrative rule defining "Waters of the United States" as that term applies to the jurisdictional scope of the Federal Government Clean Water Act (CWA). Notes western Governors' concern about lack of substantive consultation with states during the promulgation of the 2015 Clean Water Rule - and states Western Governors' expectations that Federal Government agencies, "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." States Western Governors' expectation to be engaged as "co-regulators" regarding CWA jurisdiction and that state data and analysis of science be considered in this area.

**Association of Clean Water Administrators June 19, 2017 letter to Scott Pruitt Administrator U.S. Environmental Protection Agency - Federalism Process and WOTUS Rule Development -** [https://www.epa.gov/sites/production/files/2017-09/documents/us-acwa\\_2017-06-19.pdf](https://www.epa.gov/sites/production/files/2017-09/documents/us-acwa_2017-06-19.pdf)

Year Published: 2017

Source(s): Association of Clean Water Administrators

Keywords: Clean Water Act, federalism

Summary: Comments on the development of a new rule interpreting the term "navigable waters" as defined in 33 U.S.C. 1362(7) "as part of EPA's federalism consultation under Executive Order 13132. Expresses appreciation for emphasis that EPA has placed on cooperative federalism when discussing EPA priorities for the current (2017) administration. Comments on the mutual desire to continue to build upon the relationship between EPA and states to ensure that state/Federal Government work in this area results in "smarter, more cost efficient, and more flexible environmental protection." Requests that "EPA and the Corps take whatever time is needed to ensure that a final rule is the result of thorough examination of the science and implementation concerns, as well as extensive consultation with states throughout the rulemaking." States appreciation that EPA has made themselves available for discussion on numerous occasions throughout the federalism consultation process.

**June 29, 2017 Western States Water Council Resolution on Water-Related Federal Rules, Regulations, Directives, Orders and Policies, Position (#411) - [http://www.westernstateswater.org/wp-content/uploads/2012/10/411\\_WSWC-Resolution-on-Federal-Regulatory-Actions\\_2017Jun29.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/411_WSWC-Resolution-on-Federal-Regulatory-Actions_2017Jun29.pdf)**

Year Published: 2017

Source(s): Western States Water Council

Keywords: Federalism, Federal-State collaboration, meaningful consultation, state primacy

Summary: Discusses Western States' concerns that an increasing number of Federal Government regulatory initiatives and directives are being proposed that "threaten principles of federalism, an appropriate balance of responsibilities, and the authority of the states to govern the appropriation, allocation, protection, conservation, development and management of the waters within their borders; and that a number of these action have been made with "little substantive consultation" with states." Recommends that "Federal Government agencies with water related responsibilities fully recognize and follow the requirements of Executive Order 13132 by establishing and implementing appropriate procedures and processes for substantively consulting with States."

**June 30, 2017 WGA Letter to Rodney Frelinghuysen Chairman Committee on Appropriations U.S. House of Representatives and Nita Lowey Ranking Member Committee on Appropriations U.S. House of Representatives - National Integrated Drought Information System (NIDIS) - [https://westgov.org/images/editor/NIDIS\\_FY18\\_Approps.pdf](https://westgov.org/images/editor/NIDIS_FY18_Approps.pdf)**

Year Published: 2017

Source(s): Western Governors' Association

Keywords: drought

Summary: Letter of support for adequate funding of the National Integrated Drought Information System (NIDIS) as re-appropriations priorities for the 2018 Fiscal Year are considered.

**May 15, 2017 WGA Letter to Justin Clark Director of Intergovernmental Affairs: Support of Executive Order 13777 (E.O.), Enforcing the Regulatory Reform Agenda - [http://westgov.org/images/editor/Regulatory\\_Reform\\_Task\\_Forces\\_-\\_Final.pdf](http://westgov.org/images/editor/Regulatory_Reform_Task_Forces_-_Final.pdf)**

Year Published: 2017

Source(s): Western Governors' Association

Keywords: federalism, Federal-State collaboration, meaningful consultation

Summary: Communicates WGA's support to Executive Order 13777 (Enforcing the Regulatory Reform Agenda) stating that "one of the most important and durable reforms the President could undertake is to work with them to realign the relationship of the Federal Government and states so that it operates as a true partnership." Contains attached of WGA's Realigning the State-Federal Relationship providing an Agency-by-Agency menu of possible reforms.

**November 21, 2017 WGA Letter to Tony Tooke Chief, U.S. Forest Service -**

[http://westgov.org/images/editor/USFS\\_Chief\\_Tooke\\_Congratulations\\_FINAL.pdf](http://westgov.org/images/editor/USFS_Chief_Tooke_Congratulations_FINAL.pdf)

Year Published: 2017

Source(s): Western Governors' Association

Keywords: Federal-State collaboration, rulemaking

Summary: Introduction of WGA to new (2017) USFS Chief and WGA interest in adopting substantive and detailed policies regarding, the work of the USFS. States desire to discuss the collaborative engagement of the USFS on a proposed rule to revamp the USFS public participation process (80 FR 74740, November 30, 2015). Expresses appreciation for USFS's willingness to work with Western Governors to design a process that addresses the agency's concerns about unnecessary delays in implementing non-controversial manual and handbook changes, while ensuring that states are aware of proposed changes to USFS policy.

**Western Governors' Association Policy Resolution 2017-01 - Building a Stronger State-Federal Relationship,** [http://westgov.org/images/editor/PR\\_2017-01\\_State\\_Federal\\_Relationship.pdf](http://westgov.org/images/editor/PR_2017-01_State_Federal_Relationship.pdf)

Year Published: 2017

Source: Western Governors' Association

Key Words: federalism, state primacy, meaningful consultation

Summary: Lists of recommendations for building "stronger" state-Federal Government relations. Presents positions and recommendations on optimal State-Federal relationships based on Western-State understanding of constitutionally defined division of power between Federal Government and State governments (federalism) and state primacy in the management of state natural resources. Contains notice of Western Governors' opinions that the balance of power in state-Federal Government relations has "shifted toward the Federal Government, that "Increasingly prescriptive regulations infringe on state authority; and that current fiscal environment exacerbates tensions between states and Federal Government agencies. Western Governors, notwithstanding, look forward to change toward "operating as "authentic collaborators" on the development and execution of policy." Recommends a review of Federal-State-local relationships that would include (1) defining meaningful state-federals consultation in natural resource issues and (2) reviewing State authority delegated from Federal Agencies.

**Western Governors' Association Policy Resolution 2017-04, Water Quality in the West -**  
[https://westgov.org/images/editor/PR\\_2017-04\\_Water\\_Quality.pdf](https://westgov.org/images/editor/PR_2017-04_Water_Quality.pdf)

Year Published: 2017

Source: Western Governors' Association

Key Words: Clean Water Act, co-regulators, groundwater

Summary: States perspective that States have jurisdiction over water resource allocation decisions and are responsible for how to balance state water resource needs within CWA objectives. Urges EPA and the U.S. Army Corps of Engineers 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. Lays out WGA policies and positions on various components of the CWA.

**Western State Water Council Position on Protecting Ground Water Quality, October 20, 2017 (#414) -**  
[http://www.westernstateswater.org/wp-content/uploads/2012/10/414\\_Ground-Water-Quality-Resolution\\_2017Oct20.pdf](http://www.westernstateswater.org/wp-content/uploads/2012/10/414_Ground-Water-Quality-Resolution_2017Oct20.pdf)

Year Published: 2017

Source(s): Western States Water Council

Keywords: State primacy, meaningful consultation

Summary: Proclaims Western State position that “groundwater management – the protection of its quality and its orderly, rational allocation and withdrawal for beneficial use – requires cooperation among all levels of government; and that it should be resolved that “ any Federal Government ground water quality strategy must recognize and respect state primacy, reflect a true state-Federal Government partnership.”

**Western States Water Council June 19, 2017 letter to Ms. Donna Downing EPA Project Lead - E.O. 13132 Federalism Consultation -**  
[https://www.epa.gov/sites/production/files/2017-09/documents/us-wswc\\_2017-06-19.pdf](https://www.epa.gov/sites/production/files/2017-09/documents/us-wswc_2017-06-19.pdf)

Year Published: 2017

Source(s): Western States Water Council

Keywords: federalism, Federal-State collaboration

Summary: Comments submitted regarding federalism and the evaluation of a revised rule under consideration by the EPA and the U.S. Army Corps of Engineers (the Corps) to clarify the scope of Clean Water Act (CWA) jurisdiction.

**April 18, 2018 WGA Letter to Special Assistant to the President and Deputy Director of Intergovernmental Affairs Douglas L. Hoelscher - [http://westgov.org/images/editor/Hoelscher\\_Federalism\\_final.pdf](http://westgov.org/images/editor/Hoelscher_Federalism_final.pdf)**

Year Published: 2018

Source(s): Western States Governors' Association

Key Words: federalism, co-regulators, meaningful consultation, rulemaking

Summary: Provides recommendations, which build upon, and are consistent with, shared-federalism principles communicated to the White House in a WGA December 15, 2016 letter, as well as with WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship. Puts forth position that State governments are co-sovereigns and co-regulators with the Federal Government stating that "in partnering with states (and recognizing their authority as sovereigns), the Federal Government will be positioned to utilize state knowledge and competency to produce Federal Government policy that is more efficient, cost-effective, and defensible." An attachment to this letter provides recommendations to improve the state-Federal Government relationship more broadly. These recommendations are designed to: eliminate actual or perceived barriers to state-Federal Government communication; memorialize Federal Government agency procedures to facilitate a more effective partnership; and improve Federal Government agency decision-making. Suggests that these recommendations could be used as foundation for a revised executive order or memorandum.

**August 9, 2018 Combined (WGA and other groups and associations) Letter to House and Senate Leadership: Processes of Section 401 of the CWA - <http://westgov.org/letters/letter-wga-led-coalition-urges-congress-to-reject-efforts-diminishing-states-ability-to-manage-water-quality-under-section-401-of-clean-water-act>**

Year Published: 2018

Source(s): Western Governors' Association, General Council of Clean Water Administrators, Association of Fish and Wildlife Agencies, Association of State Wetland Managers, Conference of Western Attorneys General, Council of State Governments - West, Western Interstate Region of NACo. Western Interstate Energy Board, and Western States Water Council

Key Words: Clean Water Act, federalism

Summary: Affirms belief in the implementation of the CWA as co-regulators (Federal Government and state governments) under a system of state federalism that recognizes state interests and authority.

**February 1, 2018 WGA letter to Ryan Zinke, Secretary U.S. Department of the Interior - [https://westgov.org/images/editor/DOI\\_Reorg\\_FINAL.pdf](https://westgov.org/images/editor/DOI_Reorg_FINAL.pdf)**

Year Published: 2018

Source(s): Western Governors' Association

Keywords: meaningful consultation, Federal-State collaboration

Summary: Comments concerning DOI's proposal to change the bureaus' regional office boundaries - that Western Governors did not have the opportunity to hear in advance the basis for DOI's proposal and consequently were not able to provide comments before the proposal was released to the public on January 10. Includes initial questions regarding DOI's proposal to reorganize. Notes the Western Governors' regret that "DOI did not seek input from Western States on the impact of this proposal and did not seek to engage in consultation with Western Governors regarding these proposed changes." Urges Secretary Zinke to delay implementation of regional boundary changes and engage with Governors about options that will both meet DOI's objectives and prove to be workable for state and local governments.

**June 6, 2018 WGA Letter to R.D. James, Assistant Secretary for the Army for Civil Works U.S. Army Corps of Engineers - [https://westgov.org/images/editor/USACE\\_Surplus\\_Water\\_FINAL.pdf](https://westgov.org/images/editor/USACE_Surplus_Water_FINAL.pdf)**

Year Published: 2018

Source(s): Western Governors' Association

Key Words: rulemaking, meaningful consultation

Summary: Expresses Western Governors' concern regarding the U.S. Army Corps of Engineers' proposed rule - Domestic, Municipal, and Industrial Water Supply Uses of Reservoir Projects Operated by the Department of the Army, U.S. Army Corps of Engineers". States WGA opinion that the rule would affect Corps water reservoir projects located in Western States and threaten to interfere with those states' primary authority to manage and allocate water resources within their boundaries. Expresses concerns on how the Corps plans to engage with, and respond to, states as it moves forward in its rulemaking process. States WGA opinion that the the Corps' had failed to conduct adequate consultation with potentially-affected states, or to include a proper assessment of the proposed rule's potential federalism implications. Notes that as of the date of the letter, the Western Governors were unaware of any meaningful outreach on the part of the Corps to engage with states – or respond to their expressed concerns – as part of this rulemaking effort. Urges engagement in meaningful, substantive, and ongoing consultation with states before moving forward with any efforts to develop the proposed rule.

**Position of the Western States Water Council on State Primacy Over Groundwater, March 14,2018 (#422)- <http://www.westernstateswater.org/wp-content/uploads/2018/08/422-WSWC-Position-on-State-Primacy-over-Groundwater.pdf>**

Year Published: 2018

Source(s): Western States Water Council

Key words: groundwater

Summary: References as a foundation to the resolution the Desert Land Act of 1877 and the United States Supreme Court in California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935) which “recognize States have exclusive authority over the allocation and administration of rights to the use of the groundwater within their borders and States and their political subdivisions are primarily responsible for the protection, control and management of the resource.” States Council’s position that existing Acts related to water resources “were never intended to infringe upon state ownership or control over groundwater.” Recommends that “that Federal Government agencies should work cooperatively with appropriate state agencies and officials to address Federal Government needs involving groundwater through state laws and authorities.”

**Western Governors’ Association Policy Resolution 2018-08 Water Resource Management in the West (supersedes all other yearly “Water Resource Management in the West resolutions of previous years) - <http://westgov.org/resolutions/policy-resolution-2018-08-water-resource-management-in-the-west>**

Year Published: 2018

Source(s): Western Governors’ Association

Keywords: state primacy, infrastructure, water data, drought, Federal-State collaboration

Summary: Highlights challenges in the West in future water management to sustain growth. Restates designation of State primacy over water management within state boundaries. Recognizes the essential role of partnership with Federal Government agencies in western water management and expresses hope to continue the tradition of collaboration between the states and Federal agencies particularly through the Western States Water Council and other key state-Federal Government partnerships. Recommends that states and Federal agencies should coordinate efforts to avoid the listing of water-dependent species under the ESA. Promotes the use of existing state tools to conserve and recover species. States the Governor’s belief that effective solutions to water-resource challenges require an integrated approach among states and with federal, tribal and local partners. Expresses support of Federal Government support to states through the delivery of basin water data and information supporting extreme weather event planning.

**Western States Water Council Resolution regarding Clean Water Act Jurisdiction, October 26, 2018 (#427)** - [http://www.westernstateswater.org/wp-content/uploads/2018/10/427\\_CWA-Jurisdiction\\_2018Oct26.pdf](http://www.westernstateswater.org/wp-content/uploads/2018/10/427_CWA-Jurisdiction_2018Oct26.pdf)

Year Published: 2018

Source(s): Western States Water Council

Keywords: Clean Water Act, federalism, meaningful consultation

Summary: References the Clean Water Act (CWA) as being built upon the “principle of cooperative federalism in which Congress intended the states, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers to implement the CWA as partners, delegating co-regulator authority to the states.” Notes that “EPA has actively sought meaningful state consultation, engagement and participation in its review and development of a new proposed rule to define Waters of the United States.” Proclaims Western State position that a “one-size-fits-all national approach to Federal Government regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West” and that “Western States are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks.” Resolves, among other things, that Congress and the Administration give “as much weight and deference as possible to state needs, priorities, and concerns” efforts to clarify CWA jurisdiction Include robust and meaningful state participation and consultation in the development and implementation of any rule, acknowledging the inherent federalism implications.”

**May 14, 2018 WGA Letter to EPA Assistant Administrator David Ross: Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water**  
<http://www.westernstateswater.org/wp-content/uploads/2018/05/WGA.pdf>

Year Published: 2018

Source(s): Western States Governors’ Association

Key Words: Clean Water Act, groundwater, state expertise

Summary: Comments to the EPA in response to a request for comment on whether EPA should consider clarification or revision of its previous statements regarding the Clean Water Act (CWA) and whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow with a direct hydrologic connection to the jurisdictional surface water may be subject to CWA regulation. The letter reaffirms the Western-State position that, as sovereigns, states have primary authority for managing and allocating water resources and that states have exclusive authority over non-navigable waters, including groundwater resources. Restates their expectation that Federal agencies should have a clear and accountable process to provide each State with early, meaningful, and substantive input in the development of regulatory policies that have federalism implications. States also that EPA should include the expertise and data of State officials when making determinations of “connectivity.”

**Resolution of the Western States Water Council regarding Endangered Species and State Water (#425) Rights, August 3, 2018 - [http://www.westernstateswater.org/wp-content/uploads/2018/08/425\\_Position-on-Endangered-Species-and-State-Water-Rights.pdf](http://www.westernstateswater.org/wp-content/uploads/2018/08/425_Position-on-Endangered-Species-and-State-Water-Rights.pdf)**

Year Published: 2018

Source(s): Western States Water Council

Key words: Endangered Species Act, water rights

Summary: References the Endangered Species Act as a declaration of the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. Suggests that opportunities exist for greater cooperation to conserve threatened and endangered species, while recognizing State granted water rights and addressing western water issues, without unmitigated or uncompensated “takings” of either. Calls upon Federal agencies to “engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress’ intent to resolve water and species protection issues.”

## **Appendix B: Federal-State Collaboration Event Survey Tool**

### **Background**

A survey tool was developed in this project to aid in future assessments of best-practices and potential benefits of proactive Federal/State collaboration. The survey tool queries for attitudes and opinions of case participants concerning the nature and benefits of proactive collaboration between Federal Government and state managing partners. The tool is designed to be used along with a case-study approach that describes the collaboration activity and process, and any administrative guidelines or limitations on participating Federal and State agencies. Survey questions were developed such that the tool could be applied to collaboration cases of varying type and topic with minimal revision.

### **Survey Tool**

See next page -

## Federal/State Collaboration Event Assessment Survey: Southwest Oklahoma Water Action Plan and Implementation

Please respond relative to your participation to date in the federal/state/local collaboration in support of the Southwest Oklahoma Water Supply Action Plan (SWAP) and its implementation.

### 1. In this collaboration event, I represented

*Mark only one oval.*

- A federal government entity
- A state government entity
- A local government entity
- A water user group
- Other: \_\_\_\_\_

## 1. Awareness and level of understanding of Federal/State collaboration opportunities and constraints

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### 2. 1.1. Prior to this collaboration, what was your level of awareness and familiarity with the feasibility, utility, and benefits of this type of collaboration and its process?

*Mark only one oval.*

- Intimately familiar: I had participated in this type of collaboration or similar processes previously.
- Aware and familiar: Although I had not previously participated in this type of collaboration, I was aware of previous use and utility of the process and the roles of collaborating entities from review of past cases or other experience.
- Somewhat familiar: I was aware that this type of collaboration was an option used before in other cases but was not familiar with the details of any case or the collaboration process.
- Unaware of the feasibility, or potential utility and benefits, of this type collaboration.

### 3. 1.2 Prior to this collaboration, were you aware of specific orders, authorities, policies, directives, or instructions that required or guided your agency's participation in this type of collaboration?

*Mark only one oval.*

- Yes
- No

4. If you answered "Yes" to question 1.2 above, please list any guidance you were aware of that allowed for or directed this type of collaboration.

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5. 1.3 Prior to this collaboration, were you aware of specific laws, policies, directives, or instructions that placed any boundaries or limits on your agency's participation in this type of collaboration?

Mark only one oval.

- Yes
- No

6. If you answered "Yes" to question 1.3 above, please list any guidance you were aware of that placed limits on this type of collaboration

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7. 1.4 Prior to this collaboration, how aware were you of the likely level of time and resources that would be required for this process relative to other possible actions?

Mark only one oval.

- Intimately familiar: I had participated in a similar process previously and was also aware of potential resource requirements for this and other approaches.
- Aware and familiar: Although I had not previously participated in this type of collaboration, I was aware of time and resources expended in previous similar collaborations from review of past cases or other experience.
- Somewhat familiar: I was aware, generally, of potential time and resource commitments but had not reviewed in detail the expenditures from any previous cases or past experiences.
- Not aware: I was not aware of the time and resources that would be required by this process relative to other resolution approaches.

## 2. Expectations of collaboration

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**8. 2.1 Which party do you believe should have originally requested or initiated this collaboration process**

*Mark only one oval.*

- Federal agency
- State Agency
- Local Agency
- Other: \_\_\_\_\_

**9. 2.2 What do you believe was the motivation for initiating this collaboration process? (select as many as are relevant):**

*Mark only one oval.*

- The collaboration process was mandated by law, policy, or agency rule or directive
- The collaboration process evolved from the recognition of roles and responsibilities of the engaged agencies concerning the water-resource issues at hand
- The collaboration approach presented the presumed easiest path forward toward an agreement for, or solution to, the water-resource issue at hand
- The collaboration seemed to be the only possible path forward in this case
- Other: \_\_\_\_\_

**10. 2.3 Was the level of engagement in the collaboration from the partner collaborating agency/agencies (those partners other than your agency) what you had expected**

*Mark only one oval.*

- Yes
- No

**11. Please explain**

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**12. If your answer to 2.3 above is no, do you believe this discrepancy between your expectation of engagement and what you experienced was due to any legal, policy, or administrative restrictions or limits on the partner collaborating agency**

*Mark only one oval.*

- Yes
- No
- Maybe

**13. Please explain**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**14. 2.4 Once engaged in this collaboration, did you find the partner collaborating agency/agencies perspectives toward, or goals for, the collaboration different than you had expected?**

*Mark only one oval.*

- Yes
- No

**15. Please explain**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**16. 2.5 Was the general treatment of your group/agency by the partner collaborating agency/agencies during the collaboration what you expected?**

*Mark only one oval.*

- Yes
- No

**17. Please explain**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. Success of and satisfaction with the collaboration**

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**18. 3.1 Overall, how successful was this collaboration?**

*Mark only one oval.*

0      1      2      3      4      5

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Not successful                     Extremely successful

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**19. Please explain your rating**

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**20. 3.2 How satisfied were you with the timing of the collaboration in meeting the objectives and/or concerns of your group/agency in this issue?**

*Mark only one oval.*

	1	2	3	4	5	
Not satisfied	<input type="radio"/>	Very satisfied				

**21. 3.3 Do you believe the collaboration was "proactive" in its timing toward meeting the objectives and/or concerns of your group/agency**

*Mark only one oval.*

- Proactive Collaboration - Occurred prior to or while the issue at hand was emerging - and at a period that provided sufficient time for collaboration to efficiently affect an outcome.
- Not Proactive Collaboration - Occurred later in the issue's emergence and did not begin at a period that allowed for the process to have full affect on the objectives and needs of the participating partners
- You did not perceive that the collaboration, relative to the issue at hand, was time sensitive

**22. 3.4 How satisfied were you with the scope, level, and completeness of the collaboration?**

*Mark only one oval.*

	1	2	3	4	5	
The collaboration was superficial and was not sufficient to capture my agency's perspectives, needs, and recommendations.	<input type="radio"/>	The collaboration was complete allowing for the thorough review of my agency's perspectives, needs, and recommendations.				

**23. 3.5 How satisfied were you with the impact of the collaboration on the final result or product of the process (rule, policy, settlement, plan, actions)?**

*Mark only one oval.*

	1	2	3	4	5	
Not Satisfied	<input type="radio"/>	Very Satisfied				

**24. Please explain**

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**25. 3.6 How satisfied were you with the development of working relationships during the collaboration?**

*Mark only one oval.*

	1	2	3	4	5	
Not satisfied	<input type="radio"/>	Very Satisfied				

**26. Please explain.**

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**4. Best Practices and Barriers**

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**27. 4.1 List at least two attributes of this collaborative event that contributed most to your satisfaction (if satisfied) or to the success of the process.**

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**28. 4.2 List at least two attributes of or events during this collaboration that most limited your satisfaction of the success of the process.**

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29. **4.3 List one or more aspects of this collaboration that could have been improved that would have increased your satisfaction with the process and its end result.**

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30. **4.4 Do you believe there was a better collaborative approach to addressing the issue at hand**  
*Mark only one oval.*

- Yes  
 No

31. **If yes, what other process might have been used and why do you think it wasn't.**

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32. **4.5 What knowledge, experience, tool, or other resource would have assisted you in your initiation of or participation in collaboration?**

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33. **4.6 How important was your existing knowledge of and familiarity (or lack thereof) with this type of collaboration approach to the success of the collaboration and your level of satisfaction with the process?**

*Mark only one oval.*

	1	2	3	4	5	
Not important	<input type="radio"/>	Very important				

**34. Please explain.**

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**35. 4.7 How large of a role did your original expectations of collaboration play in your level of satisfaction with this collaboration process?**

*Mark only one oval.*

	1	2	3	4	5	
None	<input type="radio"/>	Very important role				

**36. Please explain**

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## 5. Benefits of Collaboration

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**37. 5.1 Did the process increase your understanding of the utility of this type of collaboration?**

*Mark only one oval.*

Yes  
 No  
 Maybe

**38. Please explain.**

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39. **5.2 Did this collaboration process save your agency time and other resources in addressing the issue at hand if compared to engaging in other available methods or no collaboration at all?**

Mark only one oval.

1      2      3      4      5

Cost more resources than other approaches or no engagement at all

Saved, in the long term, resource compared to other options or no action on issue at hand

40. **Please explain**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

41. **5.3 Did participation in this collaboration improve your working relationship with the partner collaborating agency/agencies?**

Mark only one oval.

1      2      3      4      5

Had on effect                  Greatly improved

42. **Please explain**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

43. **5.4 If you think that this collaboration's impact on working relationships with the partner collaborating agency/agencies was positive, do you believe that the new relationships will improve the effectiveness of future collaborations?**

Mark only one oval.

Yes  
 No  
 Maybe

**44. 5.5 Did this collaboration identify any additional substantive issues you had not previously recognized and/or yield unexpected outcomes?**

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**45. 5.6 Please list any benefits of this collaboration realized by you or your agency (other than the end result and products) that you have not yet listed or discussed.**

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