



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WESTERN GOVERNORS**

#### **Clean Water Act – Section 401**

On January 31, the Western Governors' Association (WGA) addressed a letter to President Trump signed by Hawaii Governor David Ige, WGA Chair, and North Dakota Governor Doug Burgum, Vice Chair. "Western Governors are aware of reports that the White House is considering issuance of an executive order to address energy infrastructure development and that the order may include provisions affecting the implementation of the state water quality certification program under Section 401 of the federal Clean Water Act (CWA). We urge you to direct federal agencies to reject any changes to agency rules, guidance, or policy that may diminish, impair, or subordinate states' well-established sovereign and statutory authorities to protect water quality within their boundaries. Further, any executive order (or corresponding federal action) aimed at improving or streamlining the state water quality certification program under CWA Section 401 should be informed by early, meaningful, substantive, and ongoing consultation with state officials who have vast experience and expertise in the program's implementation."

The letter adds: "Since the enactment of the CWA, states have exercised their authority under Section 401 efficiently, effectively and equitably. We question the need for any federal action to amend or clarify federal policy or regulations governing the implementation of Section 401, as instances of delays or denials of state water quality certifications are extremely limited. Moreover, the CWA provides ample avenues for challenging state certification determinations. Curtailing or reducing state authority under CWA Section 401, or the vital role of states in maintaining water quality within their boundaries, would inflict serious harm to the division of state and federal authorities established by Congress.... Western Governors are committed to establishing a framework to incorporate the early, meaningful and substantive input of states in the development of federal regulatory policies that have federalism implications.... By working cooperatively with the states, the Administration can create a legacy of renewed federalism, resulting in a nation that is stronger, more resilient and more united."

#### **Clean Water Act – Waters of the United States**

On January 17, WGA Executive Director Jim Ogsbury wrote Andrew Wheeler, Acting Administrator, Environmental Protection Agency, and R.D. James, Assistant Secretary of the Army for Civil Works, calling for a 60-day extension to a comment period once a proposed rule is published. "While states are already examining the pre-publication version, we are concerned that the Proposed Rule will have substantial impacts on the balance of state and federal authority to manage and protect the nation's water resources, as well as the state-federal partnerships that are involved in the implementation of the Clean Water Act. The 60-day comment period that has been announced is insufficient for states to adequately review the content, consult with your staff, and analyze the complex implications of the Proposed Rule.... As co-regulators of water resources, states should be fully consulted and engaged in any process that may affect the management, allocation, or protection of water resources. Federal decisions that are informed by state expertise and viewpoints result in more effective, efficient, and durable federal policy that positively affects the state-federal relationship and better serves our common constituencies."

#### **Hydropower Licensing**

A January 24 letter begins: "WGA understands that the Department of Energy's (DOE) Water Power and Technologies Office (WPTO) has convened a Stakeholder Working Group to inform its project, "An Examination of the Hydropower Licensing and Federal Authorization Process." WGA wants to ensure that western states are adequately represented in any effort to "shape federal policy on hydropower licensing," Executive Director Jim Ogsbury signed the letter to Alejandro Moreno, WPTO Director. WGA Policy Resolution 2018-08, Water Resource Management in the West, reads: "Congress and the Administration should authorize and implement appropriate hydropower projects and programs through efficient permitting processes that enhance renewable electric generation capacity and promote economic development, while ensuring protection of important environmental resources and indigenous people's rights."

The letter continues: “Western Governors assert that efforts to streamline environmental permitting, ‘should not impinge upon state authority over water management or the states’ responsibility,’ to implement programs under the federal Clean Water Act (CWA).” Specifically, WGA Policy Resolution 2018-12, *Water Quality in the West*, emphasizes the importance of States’ mandatory conditioning authority under CWA Section 401. “In addition to states’ statutory authority to implement Section 401 and other programs under the CWA, hydropower licensing and relicensing may affect various sovereign authorities retained by the states, including their plenary authority over the management of water resources and wildlife. DOE should take affirmative steps to ensure that the voices, expertise and insights of western states are adequately represented in its Stakeholder Working Group.”

### Information Sharing

On January 29, WGA wrote David Bernhardt, Acting Secretary of the Department of the Interior, regarding federal protocols for the handling of state information. The letter reads: “State data can improve federal decision-making and reduce duplication. Accordingly, states encourage the appropriate use of state information and expertise by their federal partners. In some cases, however, states may elect not to share certain data due to concerns regarding federal disclosure of information that is sensitive or protected under state law.... State data – particularly non-aggregated raw data – is subject to differing levels of statutory protection under various state laws or may need to be protected to the greatest extent possible due to privacy, cybersecurity, or other considerations.... Consequently, Western Governors are eager to engage in conversations with DOI about these... and other issues presented by the sharing of state and federal information.”

The letter continues: “States and the federal government must be able to communicate and exchange information in an effective manner to discharge our joint responsibilities to constituents. Western Governors invite the Department to discuss state and federal data-sharing, as well as disclosure concerns and potential solutions.... Federal protocols for the handling of state information merit a broader conversation outside of, and in addition to, the public comment process for the Department’s proposed FOIA regulations. Western Governors look forward to working with you on this important matter and continuing to improve the state-federal relationship and the quality of the services we provide to our citizens.” It was signed by Governors Ige and Burgum as WGA Chair and Vice Chair.

### Montana

On January 31, Governor Steve Bullock (D) gave his State of the State address. He talked about a \$290M

proposal to invest in infrastructure. “In crafting this proposal, I have listened to your concerns. I heard you tell me that too much goes to buildings and not enough to base infrastructure. I’ve proposed more money for horizontal infrastructure – water, sewer, solid waste disposal, bridges and broadband – than buildings.” <http://governor.mt.gov/Pressroom/governor-steve-bullocks-2019-state-of-the-state-address>.

### Oregon/Clean Water Act/Clean Air Act

Governor Kate Brown (D) has proposed new state legislation to adopt past standards under the Clean Air Act and the Clean Water Act into state law, to stop the federal government from threatening Oregon’s environmental safeguards. “Since the 1970s, clean air and clean water standards have advanced to reflect the science and protect people. For the first time in history, these standards are being rolled back and we now face threats to the basic underpinnings of the Clean Air Act and Clean Water Act themselves. The Oregon Environmental Protection Act ensures that the federal environmental standards of the Clean Air and Clean Water Acts that were in place and effective as of January 19, 2017, before President Trump took office, shall remain in effect and be enforceable under state law even if the federal government rolls back these standards. Oregonians must be able to rely on the protections for clean air and clean water that they have come to expect.”

The Governor’s plan would clarify that the Clean Water Rule (Waters of the United States or WOTUS) applies in Oregon, “...protecting our treasured navigable lakes, rivers, and streams from pollution.” EPA’s Clean Water Rule is intended to clarify which water bodies (rivers, lakes, streams, and wetlands) are under federal jurisdiction and protected by under the Clean Water Act, and delegated federal authority, and which waters are under state control. The proposed legislation would extend state protection to rivers and streams where federal jurisdiction was previously unclear. Exemptions for agricultural areas, including ditches and fields, would be extended under state authority.

### Utah

In January 30, Governor Gary Herbert (R) gave his State of the State address. “Drought has created punishing conditions for wildlife and agriculture. Fires have devastated our forests, fouled our watersheds and polluted our air. But Utahns have faced these challenges as they have always done, with faith, courage and resilience. And overall, 2018 was indeed a banner year of accelerated economic growth and prosperity. I am pleased to report to you tonight that in spite of challenges, the state of our state is strong, it is resilient, and our outlook is very bright.” <https://governor.utah.gov/2019/01/31/governor-herberts-2019-state-of-the-state-address-full-transcript/>.

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