

**Written Testimony of James D. Ogsbury, Executive Director
Western Governors' Association**

**Submitted to the United States Senate
Committee on Appropriations
Subcommittee on Energy and Water Development
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Fiscal Year 2020 Appropriations

Chairman Alexander, Ranking Member Feinstein, and Members of the Subcommittee, the Western Governors' Association (WGA) appreciates the opportunity to provide written testimony on the appropriations and activities of the federal agencies under the Subcommittee's jurisdiction, including the Department of Energy (DOE), Bureau of Reclamation (BOR) and U.S. Army Corps of Engineers (Corps). WGA is an independent organization representing the Governors of 19 western states and 3 U.S. territories in the Pacific. The Association is an instrument of the Governors for bipartisan policy development, information-sharing and collective action on issues of critical importance to the western United States.

The agencies within the Subcommittee's jurisdiction wield significant influence over the American West and its development of energy and water resources. Western Governors recognize the importance of a close and productive working relationship between states and the federal government and understand that more effective intergovernmental cooperation depends on the treatment of states as full and equal partners with the federal government. The promotion of a greater partnership between states and the federal government is central to the mission of WGA and is reflected in WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship, which I commend to your attention.

States possess the primary legal authority for the allocation, management, protection and development of water resources within their borders. Congress and the federal judiciary have consistently and expressly recognized, and deferred to, this state authority. Federal policy must respect and preserve state authority to manage water, as well as recognize state law and the financial, environmental and social values of water resources to citizens of the western states.

The following recommendations are intended to ensure that taxpayers realize a meaningful return on the investment of limited discretionary resources. This goal will be more readily achieved to the extent that federal agencies effectively leverage state authority, resources and expertise.

Jurisdictional Scope of the Clean Water Act: Western Governors have expressed concern regarding the development of the 2015 Clean Water Rule by the Environmental Protection Agency (EPA) and the Corps, as states were not adequately consulted during that rulemaking process. EPA and the Corps have promulgated new language to clarify the jurisdictional scope of the Clean Water Act and have taken positive steps to engage WGA and individual states with respect to this issue. Western Governors look forward to working with the agencies to further develop and implement a new rule that effectively protects our nation's water

quality, while protecting the primary authority of states over the management and allocation of water resources. Any assistance the Subcommittee can provide in achieving this result would be greatly appreciated.

State Authority Over Groundwater: States have exclusive authority over groundwater within their borders and are primarily responsible for protecting, managing, and otherwise controlling the resource. WGA encourages the Subcommittee to prohibit the use of appropriated funds for any activity that would, or has the potential to, usurp state authority over groundwater resources. Federal agencies must work with the states to address any groundwater-related needs and concerns. The federal government has long recognized the right to use water as determined under the laws of the various states; Western Governors value their partnerships with federal agencies as they operate under this established legal framework.

Water Supply Rule: The Corps' proposed Water Supply Rule concerning surplus waters within Missouri River Basin impoundments infringes upon the inherent primary authority of states over water resources, particularly over the natural flows within traditionally navigable waterways falling under state jurisdiction. The administration of water supply contracts by the Corps must not have a negative effect on states' primary authority over the management, allocation, planning, and protection of water resources within their boundaries. This authority over water extends to all naturally occurring waters, including natural flows impounded in Corps reservoirs. The rights of states to access and appropriate such waters must not be precluded by any federal regulation, including the Corps' proposed Rule. WGA appreciated the report language accompanying the House version of the FY2019 Energy and Water Appropriations Act (H.Rpt. 115-697) which urges the Corps to consider adoption of the alternative definition of "surplus water" (excluding "natural flows" from stored water in the Missouri River mainstem reservoirs) in the proposed Rule. Despite this Congressional directive, the Corps still intends to continue promulgating the proposed Rule, according to the Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions. WGA requests that, in addition to retaining the FY2019 House report language, the Subcommittee withhold funding to implement the proposed Rule, if and when it may be finalized, as it applies to any federal actions that infringe upon states' historic authority over natural flows of water within their boundaries.

Water Data: Western states need reliable information on the status, trends and projections of water availability. Accordingly, Western Governors support the funding of improved predictive and adaptive capabilities for extreme weather variability and related impacts, including improvements to sub-seasonal and seasonal precipitation forecasting, to support water management decision-making. Data collection, monitoring and communications is most effective when coordinated across federal agencies and with state agencies.

Water Infrastructure: Aging infrastructure for water, wastewater and hydropower facilities and the need for additional water projects are increasingly urgent considerations. Infrastructure investments are essential to our nation's continued economic prosperity, electric generation capacity and environmental protection, and they assist states in meeting federally mandated environmental standards.

The Subcommittee should to fully utilize the receipts accruing to the Reclamation Fund for their intended purpose: the conservation, development and use of resources to meet western water-related needs. Western Governors support the construction of congressionally authorized BOR rural water projects and facilities that are part of congressionally authorized Indian water rights settlements.

The Subcommittee can also promote greater investment in water infrastructure, utilizing such tools as loan guarantees, revolving funds, infrastructure banks and water trust funds. Western Governors urge that capital budgeting and asset management principles be used to determine funding priorities based on long-term sustainability and not annual incremental spending choices. These investments in infrastructure need to be accompanied by dedicated sources of funding and guided by appropriate financing, cost-sharing, pricing and cost recovery policies.

It is important for the Subcommittee to ensure that infrastructure planning and permitting guidelines, rules and regulations are coordinated, streamlined and sufficiently flexible to: 1) allow for timely decision-making in the design, financing and construction of needed infrastructure; 2) account for regional differences; 3) balance economic and environmental considerations; and 4) minimize the cost of compliance. Western Governors strongly request that any authorization of hydropower facilities ensure that the federal government does not replace or impede existing state authority in the certification of hydropower licensing. Section 401 of the Clean Water Act is operating as it was intended and states' mandatory conditioning authority must be retained.

Aquatic Invasive Species: The spread of invasive quagga and zebra mussels continues to be a major threat to western water resources. Western Governors request that BOR, in partnership with states and regional coordinating bodies of states, be provided with both the resources and statutory authority required to implement mandatory inspection of all high-risk watercraft and decontamination of watercraft infested with quagga and zebra mussels leaving waterbodies under their jurisdiction, conduct early detection monitoring, participate in rapid response exercises, and maintain a ready reserve of rapid response containment equipment for regional application in the event of a detection.

Waste Isolation Pilot Project: Continued funding for the Waste Isolation Pilot Plant (WIPP) Transportation Safety Program is essential to the expeditious cleanup and disposal of transuranic (TRU) waste from U.S. nuclear weapons complex facilities in western states, including Idaho National Laboratory, Los Alamos National Laboratory in New Mexico, and the Hanford Site in Washington. DOE must continue to provide sufficient and timely in-kind, financial, technical and other appropriate assistance to any state or Indian tribe through whose jurisdiction TRU waste will be transported. This assistance is integral to planning, developing and implementing the WIPP Transportation Safety Program. The safe and uneventful transportation of TRU waste through the WIPP Transportation Safety Program is a priority of Western Governors, and WGA encourages the Subcommittee to provide adequate funding to ensure that this important work continues.

Energy: Western Governors support federal programs designed to: increase the development and use of alternative transportation fuels and vehicles; promote the development of transportation infrastructure; and increase innovation and application of energy storage. Congress should also: ensure adequate funding and resources for state emergency planning, response, and recovery; maintain funding for the State Energy Program (SEP), Weatherization Assistance Program (WAP), and Low-Income Home Energy Assistance Program (LIHEAP); and provide appropriations for effective cybersecurity education and workforce development programs. The Subcommittee can also help ensure that DOE fulfills its statutory obligation to consult with states on the 2019 triennial electric transmission congestion study.

Western Governors and federal agencies deal with a complex web of interrelated energy and water resource issues. It is an enormous challenge to judiciously balance competing needs in this environment, and Western Governors appreciate the difficulty of the decisions this Subcommittee must make. The foregoing recommendations are offered in a spirit of cooperation and respect, and WGA is prepared to assist you as you discharge these critical and challenging responsibilities.