

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

**Submitted to the United States Senate
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
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Fiscal Year 2020 Appropriations

Chairman Murkowski, Ranking Member Udall, and Members of the Subcommittee, the Western Governors' Association (WGA) appreciates the opportunity to provide written testimony on the appropriations and activities of the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), U.S. Forest Service (USFS) and Environmental Protection Agency (EPA). 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 vast areas of the American West. Ninety-four percent of all federal lands are located in the western states, and the federal government owns over 46 percent of the land within active WGA states. The work of this Subcommittee is of vital importance to Western Governors, as it establishes how these lands are managed and how federal agencies interact with other levels of government and the public.

There is a tension between state and federal governments, one that is embedded in the fabric of our Constitution. These sovereign governments must have a close and productive working relationship to increase efficiencies and maximize returns on taxpayer investments. 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.

In last year's House Committee report accompanying the Interior, Environment, and Related Agencies FY19 appropriations bill (H.Rpt.115-765), the federal agencies funded by the Interior bill were directed to provide appropriate feedback on tribal input received by agencies through meaningful consultation in their decision-making processes. Similar direction to federal agencies for consultation with states, which is required pursuant to Executive Order 13132, would improve the co-sovereign relationship between states and the federal government. The Governors have also urged the Department of the Interior (DOI) to engage in meaningful, substantive consultation with states on departmental reorganization and appreciate the direction to DOI regarding the necessity of this consultation. Reorganization offers an excellent opportunity to improve state and federal consultation, coordination, and communication.

The promotion of greater partnership between states and the federal government is central to the mission of WGA and a key theme of several WGA projects, including the Species

Conservation and Endangered Species Act Initiative, the National Forest and Rangeland Management Initiative, and the current Biosecurity and Invasive Species Initiative. Responsible land management can only occur when federal, state and local stakeholders work collaboratively to improve the health and resilience of our lands. Likewise, fish and wildlife conservation is only possible through the cooperative efforts of state and federal officials across multiple disciplines.

Western Governors believe that states should be full partners in the implementation of the Endangered Species Act (ESA) and have the opportunity to participate in listing decisions, critical habitat designations, recovery planning and delisting decisions. The Act is premised on a strong state-federal partnership. Section 6(a) of the ESA states that: “In carrying out the program authorized by the Act, the Secretary shall cooperate to the maximum extent practicable with the States.” WGA submits that such cooperation should involve meaningful opportunities for states to comment, participate, or undertake proactive measures before the federal government takes action under the ESA.

States possess primary authority to manage most fish and wildlife within their borders, and they are the principal recipients of economic benefits associated with healthy species and ecosystems. At the same time, species listings and their associated prohibitions and consultations can affect the efforts of western states to promote economic development, accommodate population growth, and maintain and expand infrastructure. Consequently, states should have the right to intervene in judicial and administrative proceedings regarding the ESA. Western Governors urge the Subcommittee to support the legal standing of states to participate in administrative and judicial actions involving ESA that, by their nature, implicate state authority and resources.

For the past several years, the Subcommittee has adopted report language directing federal land managers to use state fish and wildlife data and analyses as principal sources to inform land use, land planning and related natural resource decisions. Western Governors are deeply appreciative of your commitment to promote a positive relationship between the states and the federal government in the use of wildlife data while respecting the limitations of state data privacy laws. Federal managers need data-driven science, mapping and analyses to effectively manage wildlife species and habitat, and in many cases states generate the best available wildlife science. Western Governors encourage continued coordination between federal and state agencies on wildlife data collection to avoid spending scarce resources on duplicative data collection efforts.

WGA recommends the enactment and full funding of a permanent and stable funding mechanism for the Payment in Lieu of Taxes (PILT) program administered by DOI. PILT funding does not represent a gift to local jurisdictions; rather it provides important compensation for the disproportionate acreage of non-taxable federal lands in the West. Similarly, payments under the Secure Rural Schools and Community Self-Determination Act (SRS) compensate communities whose timber industries have been negatively impacted by actions and acquisitions of the federal government. Western Governors request that you appropriate full funding for both PILT and SRS payments in Fiscal Year 2020.

Data for water management and drought response planning is critical to western states. Western Governors request adequate funding levels for the Cooperative Water Program and National Streamflow Information Program, both administered by the U.S. Geological Survey. This data is integral to the water supply management decisions of states, utilities, reservoir operators and farmers. They are also used for flood forecasts and are, accordingly, essential for risk assessment and water management. These programs are important elements of a robust water data management framework in western states and provide needed support for drought mitigation efforts throughout the West.

Infrastructure management is another crucial element of drought response. The Environmental Protection Agency's (EPA) Clean Water and Drinking Water State Revolving Funds (SRFs) provide necessary support for communities to maintain and enhance their water infrastructure. Western Governors' Policy Resolution 2018-12, Water Quality in the West, encourages adequate funding for SRFs.

Western Governors continue to be concerned about the number of wild horses and burros on BLM lands. This number is presently estimated to be more than triple the current Appropriate Management Level (AML). Overpopulation can degrade rangeland, negatively affecting wildlife and domestic livestock, as well as the habitat of threatened and endangered species. WGA supports a process to establish, monitor and adjust AMLs for wild horses and burros that is transparent to stakeholders, supported by scientific information (including state data), and amenable to adaptation with new information and environmental and social change.

WGA remains concerned about the spread of invasive mussels in the West and have chosen to highlight this issue through the Western Governors' Biosecurity and Invasive Species Initiative. Of particular concern are invasive quagga and zebra mussels, which continue to be a major threat to western water resources. To combat this threat, Western Governors request that the BLM, FWS, and NPS be provided with 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.

Western Governors applaud NPS for its efforts to preserve iconic landscapes, habitats and cultural resources. WGA is concerned, however, that the significant maintenance backlog across all National Parks will impede responsible natural and cultural resources management. WGA encourages adequate funding to support ongoing NPS operations and address critical infrastructure needs.

Western Governors had previously expressed concern regarding the development of the 2015 Clean Water Rule by the EPA and U.S. Army Corps of Engineers' (USACE), as states were not adequately consulted by the agencies during the rulemaking process. EPA and USACE have promulgated new language to clarify the jurisdictional boundaries of the Clean Water Act and have taken positive steps to engage WGA and individual states with respect to this issue. WGA looks forward to working with the agencies to further develop and implement a new rule that takes into account the viewpoints of Western Governors and adequately protects states' primary authority over the management and allocation of water resources.

States have exclusive authority over the allocation and administration of rights to groundwater located within their borders and are primarily responsible for protecting, managing, and otherwise controlling the resource. The regulatory reach of the federal government was not intended to, and should not, be applied to the management and control of groundwater resources. WGA encourages Congress to include express and unambiguous language protecting states' authority over groundwater resources in any water-related legislation, as well as clear direction to administrative agencies to respect such authority. WGA appreciates the language included by the Subcommittee in prior Appropriations Acts addressing existing statutory authorities for groundwater protection. Federal agencies should work through existing state authorities to address their groundwater-related needs and concerns. Such collaboration will help ensure that federal efforts involving groundwater recognize and respect state primacy and comply with all statutory authorities.

States also possess delegated authority from EPA to manage air quality within their borders. Congress and EPA should recognize state authority under the Clean Air Act (CAA) and accord states sufficient flexibility to create air quality and emissions programs tailored to individual state needs, industries, and economies. State CAA programs require financial support from Congress, yet funding has declined since the CAA's enactment. In addition, given the unique character of the West and the region's attainment challenges, funding should be appropriated for EPA to assist western states in research on background, interstate and transported ozone. More frequent and intense wildfires are steadily reducing the West's gains in air quality improvement. Smoke from wildfires causes exceedances under National Ambient Air Quality Standards for particulate matter and ozone, negatively affecting public health, safety and transportation. Prescribed fire can reduce these effects but is currently underused in many areas.

Western states depend on a safe, reliable and resilient network of infrastructure to move goods, people, energy, and agricultural products to meet growing demands across our nation and world. Because a significant portion of the West is federally-owned, federal processes impact the region's infrastructure. Congress should clarify that state, local and tribal governments, as well as their political subdivisions, have unique and critical duties to serve their citizens and are not stakeholders or members of the public for purposes of the National Environmental Policy Act (NEPA) process. In addition, existing state environmental review processes can supplement and inform federal NEPA reviews; federal agencies should work directly with states to obtain and use up-to-date state data and analyses as critical sources of information in the NEPA process.

Western Governors and federal land management agencies deal with a complex web of interrelated natural 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 in discharging these critical and challenging responsibilities.