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March 3, 2021

The Honorable Jennifer M. Granholm  
Secretary  
U.S. Department of Energy  
1000 Independence Avenue SW  
Washington, DC 20585

Dear Secretary Granholm:

On behalf of the Western Governors' Association (WGA), we are writing to congratulate you on your confirmation to serve as the Secretary of Energy. We look forward to working with you in your new capacity as the chief energy officer of the United States.

WGA represents the Governors of the 22 westernmost states and U.S. territories. The association is an instrument of the Governors for bipartisan policy development, information exchange and collective action on issues of critical importance to the western United States.

WGA is deeply interested in, and has adopted substantive and detailed policies regarding, activities within the jurisdiction of the Department of Energy (DOE). The purpose of this communication is to introduce you to those policies and to encourage a close and productive working relationship. Western states are eager to work closely with you as authentic partners in the design and execution of programs and policies that affect our constituents and implicate state authority.

The Department manages the national laboratories, which serve as the leading institutions for scientific innovation in the United States and are important economic drivers in many western states. The research conducted at these sites significantly contributes to addressing the energy challenges our nation faces. DOE is involved in the West-wide Energy Corridor effort under Section 368 of the Energy Policy Act of 2005 (Pub. L. 109-58), which designates corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land in eleven western states.

You also oversee the management of the current and former nuclear weapons production facilities, many of which are located in western states. The responsible management of these sites, and the environmental remediation activities at former production sites, are of significant interest to Western Governors.

The attachment to this letter presents a high-level summary of select gubernatorial priorities within your jurisdiction. We hope you will take time to review this information and remember that Western Governors are enthusiastic partners with respect to these and other issues. Moreover, we expect to be consulted throughout the decision making and rulemaking processes of the Department.

One of Western Governors' foundational policy statements is WGA Policy Resolution 2021-01, *Strengthening the State-Federal Relationship* (attached). The resolution notes that "[e]ach Executive department and agency should have a clear and accountable process to provide each state –

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through its Governor or their designees – with *early, meaningful, substantive, and ongoing consultation* in the development of federal policies that affect states.” (emphasis added). We submit that such consultation should commence immediately, both with respect to departmental policies under review and those under development.

Congratulations again on your appointment. We look forward to working with you to realign the state-federal relationship to better serve our common constituencies.

Sincerely,



Kate Brown  
Governor of Oregon  
Chair, WGA



Brad Little  
Governor of Idaho  
Vice Chair, WGA

Attachments



## Department of Energy Summary of Priorities

This document outlines Western Governors’ priorities for the Department of Energy. It is comprised of positions adopted by Western Governors in WGA policy resolutions.

Priority	Governors' Policy
<b>State-Federal Relationship</b>	
<p><b>States are Sovereigns</b></p> <p>Ensure that states are not treated as equivalent to stakeholders, interested parties, public or private organizations, industry, or the public by federal agencies. Rather, states should be treated as sovereign entities and engaged in a government-to-government manner.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Preemption</b></p> <p>Explicitly state that preemption is disfavored and require agencies to specify where preemption is warranted. In such cases, agencies must provide affected states notice and an opportunity to participate in proceedings at which the agency must demonstrate the preemption of state authority is needed to accomplish a national purpose.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Consultation</b></p> <p>Seek opportunities for more meaningful consultation through:</p> <ul style="list-style-type: none"> <li>• agency-specific processes;</li> <li>• Executive Branch cross-cutting regulatory efforts; and</li> <li>• administrative reorganization.</li> </ul> <p>Require federal agencies to consult with states on agency reorganization and regulatory reform.</p> <p>Consult with states on a regular basis: as a predicate to federal action; through the pre-publication stage of rulemaking; after publication and before adoption of rules and regulations; and on an ongoing basis throughout implementation.</p> <p>Define “consultation” to:</p> <ul style="list-style-type: none"> <li>• Include early, meaningful, substantive, ongoing, government-to-government communication and exchange with states through Governors or their designees.</li> <li>• Require procedures separate from and beyond the stakeholder or public process.</li> </ul> <p>Clarify that notice and comment rulemaking procedures do not satisfy agencies’ requirements to consult with states where required by law.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>

Priority	Governors' Policy
<p>Require all federal departments and agencies, including independent regulatory agencies, to codify in regulation a clear, consistent, and accountable process for state consultation on policies with federalism implications. Such processes should include a remedy for states where agencies fail to do so.</p> <p>These regulations should also require:</p> <ul style="list-style-type: none"> <li>• Federal agencies to provide written notification to and an invitation to consult with Governors of all potentially affected states (or their designees) of policies with federalism implications within the area affected by the proposed federal action.</li> <li>• Federal agencies to provide procedures for written response to Governors' or their designees' input prior to a final federal decision.</li> <li>• Federal agency decision-makers to hold regular, ongoing consultation meetings with Governors or their designees regarding policies with federalism implications.</li> </ul>	
<p><b>Cooperating Agency Status</b></p> <p>Better define "cooperating agency" under NEPA processes.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p> <p>WGA Policy Resolution <a href="#">2018-15</a>, Modernizing Western Infrastructure</p>
<p><b>Rulemaking</b></p> <p>Prior to promulgation of a rule with federalism implications, require federal agencies to:</p> <ul style="list-style-type: none"> <li>• ensure that new funds sufficient to pay the direct costs incurred by the state in complying with the regulation are provided by the federal government; and</li> <li>• provide OMB with a description of the extent of agency's consultation with states, a summary of their input, the agency's response to that input, and any written communications submitted by states.</li> </ul> <p>Provide an opportunity for Governors or their designees to review agencies' regulatory agendas.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Non-legislative Rulemaking/Guidance</b></p> <p>Require agencies to consult with affected states prior to issuing guidance documents with federalism implications – including memoranda, directives, notices, bulletins, manuals, handbooks, opinions, and letters.</p> <p>Require agencies to develop a transparent and accountable process for determining whether a proposed agency action requires notice-and-comment rulemaking procedures prescribed under Section 553 of the Administrative Procedures Act.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>

Priority	Governors' Policy
<p>Require agencies to publish all existing guidance documents at a single location on their agency's website and publish new and rescissions of guidance documents at the same location on the date they are issued.</p>	
<p><b>Consistency and Avoidance of Conflicts</b></p> <p>Require federal agencies to make all reasonable efforts to achieve consistency and avoid conflicts between federal and state objectives, plans, policies, and programs; and address and resolve all issues and concerns raised by states, unless precluded by federal law.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>State Data</b></p> <p>Require agencies to incorporate state and local data and expertise, subject to existing state requirements for data protection and transparency, into their decisions. This data should include scientific, technical, economic, social, and other information on the issue the agency is trying to address.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p> <p>WGA Policy Resolution <a href="#">2021-02</a>, Utilizing State Data in Federal Decision Making</p>
<p><b>Settlement Negotiations</b></p> <p>In settlement negotiations impacting policies with federalism implications, require federal agencies to provide notice of the action to affected states, consult with affected states on any negotiations, and seek state concurrence regarding the settlement.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Federalism Office</b></p> <p>Establish a Federalism Office within the White House or reestablish the U.S. Advisory Committee on Intergovernmental Relations to ensure federal agencies meet their federalism obligations.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Perceived Barriers to the State-Federal Relationship</b></p> <p>Require agencies to revise or establish their <i>ex parte</i> rules or policies in accordance with current case law, which permits these communications in informal rulemaking proceedings; and/or exempt communications with states and state officials from the definition of <i>ex parte</i> communications.</p> <p>Exempt all meetings held exclusively between federal personnel and non-federal elected officials (or their designees) acting in their official capacities or in areas of shared intergovernmental responsibilities or administration from FACA.</p> <p>Create statutory exceptions to FOIA disclosure for state data and analysis in instances where publication of state data provided to federal agencies would be violation of existing state statutes.</p> <p>Investigate and develop solutions for other barriers to state-federal communication presented by FOIA.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p> <p>WGA Policy Resolution <a href="#">2021-02</a>, Utilizing State Data in Federal Decision Making</p>

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<p><b>Unfunded Mandates Reform Act</b></p> <p>Eliminate the \$100 million threshold for the application of the UMRA to federal intergovernmental mandates.</p> <p>Require agencies to incorporate state government input and data, including social and economic data, in their qualitative and quantitative assessment of anticipated costs and benefits of qualifying rules under the UMRA.</p> <p>Strengthen the consultation requirements for federal intergovernmental mandates.</p> <p>Authorize a court to compel substantive, meaningful consultation with elected officers of state governments if an agency fails to develop or implement the effective process under the UMRA.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p> <p>WGA Policy Resolution <a href="#">2021-02</a>, Utilizing State Data in Federal Decision Making</p>
<p><b>State Participation on Federal Boards</b></p> <p>Require agencies to assure state participation in relevant federal science boards by requiring the selection of state scientists to serve on science-based groups informing federal regulation.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Settlement Negotiations</b></p> <p>Where their roles and responsibilities are impacted, states should be meaningfully consulted during settlement negotiations, including negotiations aimed at avoiding, rather than resolving, litigation.</p> <p>Provide notice to affected Governors' offices and give co-regulating states opportunities to participate in the proceedings.</p> <p>Where legally permissible, that right should extend to federal agencies' settlement negotiations impacting state environmental and natural resource management prerogatives.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>
<p><b>Cost/Benefit Analyses</b></p> <p>Seek mandatory use of a refined model for federal land management agencies' economic impact and cost/benefit analyses designed in conjunction with affected states and counties.</p>	<p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p> <p>WGA Policy Resolution <a href="#">2021-02</a>, Utilizing State Data in Federal Decision Making</p>
<p><b>Streamlining</b></p> <p>Coordinate, streamline, and increase the flexibility of infrastructure planning and permitting guidelines, rules, and policies to:</p> <ul style="list-style-type: none"> <li>• allow for timely decision-making in the design, financing, and construction of needed infrastructure;</li> <li>• account for regional differences;</li> <li>• balance economic and environmental considerations;</li> </ul>	<p>WGA Policy Resolution <a href="#">2015-08</a>, Water Resource Management in the West</p> <p>WGA Policy Resolution <a href="#">2021-01</a>, Strengthening the State-Federal Relationship</p>

Priority	Governors' Policy
<ul style="list-style-type: none"> <li>minimize costs.</li> </ul>	WGA Policy Resolution <a href="#">2018-15</a> , Modernizing Western Infrastructure
<p><b>Preemption</b></p> <p>Require agencies to develop step-by-step internal guidelines on compliance with the preemption provisions of Executive Order 13123.</p> <p>Require internal oversight procedure by which agency scrutinizes potential preemptions of state authority.</p> <p>Improve preemption and federalism review requirements in OIRA's "A-4 Circular" checklist.</p>	WGA Policy Resolution <a href="#">2021-01</a> , Strengthening the State-Federal Relationship
<b>Cybersecurity and Physical Security</b>	
<p><b>Energy Infrastructure</b></p> <p>Secure the United States' energy supply and systems, and safeguard against risks to cybersecurity and physical security.</p> <p>Work with the Department of Defense to meet its national security mission by ensuring safe and secure onsite and off-site electricity generation for key defense installations.</p> <p>Continue to reduce reliance on non-North American oil imports from unstable foreign sources through individualized state-by-state solutions, such as increasing North American production, improving fuel efficiency, and developing renewable and alternative fuels.</p> <p>Ensure there is sufficient domestic energy supply, including domestic renewable electric generation, to meet existing and new market demand.</p> <p>Identify security and other vulnerabilities of energy infrastructure and create programs and standards to defend infrastructure from cyber and physical attacks, as well as natural disasters.</p> <p>Encourage effective relationships between state agencies, federal agencies, public utilities, and the private sector to prevent and prepare for risks to the region's energy supply and systems, as well as to respond to and recover from disruptions.</p> <p>Promote access to resources for state emergency planning, response, and recovery.</p> <p>Expand, upgrade, and secure transmission and pipeline infrastructure, as well as ensure that all federal pipeline safety measures are efficiently implemented.</p>	WGA Policy Resolution <a href="#">2019-02</a> , Cybersecurity  WGA Policy Resolution <a href="#">2018-04</a> , Energy in the West  <a href="#">Energy Vision for the West</a>  WGA Policy Resolution <a href="#">2021-01</a> , Strengthening the State-Federal Relationship
<p><b>Coordination and Consultation</b></p>	WGA Policy Resolution <a href="#">2019-02</a> , Cybersecurity















Priority	Governors' Policy
<p><b>Wood Products</b></p> <p>Strive to find ways to support and expand critical forest and rangeland management infrastructure, including mills, biomass facilities, and roads.</p> <p>Find ways to support and expand cost-effective means of supplying restoration projects, such as with large woody material from adjacent overstocked forests.</p> <p>Work to ensure that wood product producers have increased certainty of supply, as well as a broader suite of outlets, in addition to traditional sawmills and existing biomass facilities.</p>	<p>WGA Policy Resolution <a href="#">2021-03</a>, National Forest and Rangeland Management</p>







recourse for an agency's failure to consult except for litigation on the merits of a federal decision.

12. Congress and Executive Order 13132 currently require federal agencies to document the effects of their actions on states in certain circumstances. In practice, federal agencies rarely prepare these prescribed federalism assessments or statements. Even when federal agencies prepare such documents, they are not ordinarily informed by input from affected states. In addition, these documentation requirements only apply at the end of the rulemaking process and cannot substitute for early and meaningful consultation with states.
13. Federal agencies have suggested to states that there are legal or other barriers to state consultation, such as: federal agency policies restricting ex parte communications; concerns about the applicability of Federal Advisory Committee Act (FACA) procedures to meetings between state and federal officials; and issues with sharing information that would otherwise be exempt from disclosure under the Freedom of Information Act (FOIA).
14. Federal agencies do not adequately incorporate state data and expertise into their decisions. This can result in duplication, inefficiency, and federal decisions that do not reflect on-the-ground conditions. Consideration and incorporation of state, tribal, and local data and analysis will result in federal actions that are better-informed, more effectively coordinated among all levels of government, and tailored to the communities they affect.
15. Many of these issues stem from a profound misunderstanding throughout the federal government regarding the role and legal status of states. Over the past several years, Western Governors have worked to improve the federal government's understanding of state sovereignty, authority, and state-federal consultation; meaningful structural change, however, has yet to occur.

## **B. GOVERNORS' POLICY STATEMENT**

1. A good faith partnership between states and the federal government will result in more efficient, economic, effective, and durable policy, benefiting the Governors' and the federal government's shared constituents and resulting in a nation that is stronger, more resilient, and more united.
2. Improving state-federal communication and coordination is a goal that transcends party lines, and it is among the Governors' highest priorities. The Governors urge Congress and the Executive Branch to make fundamental changes to realign and improve the state-federal paradigm.

### ***State Sovereignty and Authority***

3. States are co-sovereigns with the federal government pursuant to the Tenth Amendment of the U.S. Constitution and other federal law. Congress and federal agencies must recognize state sovereignty and must not conflate states with other entities or units of government. States should not be treated as stakeholders or members of the public.
4. State authority is presumed sovereign in the absence of Constitutional delegation of authority to the federal government.









