

June 18, 2019

The Honorable Roger Wicker  
Chairman  
Committee on Commerce, Science  
& Transportation  
United States Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Maria Cantwell  
Ranking Member  
Committee on Commerce, Science  
& Transportation  
United States Senate  
512 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Wicker and Ranking Member Cantwell:

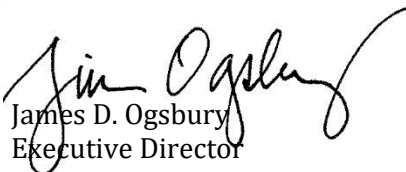
Western Governors support the creation of more efficient infrastructure permitting and environmental review processes without shortening timelines for state input and consultation, or compromising natural resource, wildlife, environmental, or cultural values. The Fixing America's Surface Transportation (FAST) Act, which expires in 2020, was a significant step in improving the federal infrastructure approval process.

Thank you for examining the reauthorization of the FAST Act in your June 19, 2019 hearing. To inform the Committee's consideration of this important topic, I request that the Committee include the following attachments in the permanent record of the hearing:

- WGA Policy Resolution [2018-15](#), *Modernizing Western Infrastructure*; and
- WGA Policy Resolution [2018-06](#), *Transportation Infrastructure in the Western United States*.

Thank you for your consideration of this request.

Respectfully,



James D. Ogsbury  
Executive Director

Attachments



## Policy Resolution 2018-15

### Modernizing Western Infrastructure

#### A. **BACKGROUND**

1. 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. Investments to modernize our state's infrastructure, including ports, water systems, bridges, pipelines, highways, airports, electric generation and transmission, communications facilities, recreational assets and railways not only support the economic well-being of our communities, they also serve to position our economies to attract and retain investment through maintaining our competitive advantage in a growing global marketplace. Because a significant portion of the West is federally-owned, federal processes impact the region's infrastructure.
2. Modernizing and maintaining the West's network of infrastructure relies upon permitting and review processes that require close coordination and consultation among state, federal and tribal governments. State and federal coordination is necessary to ensure that infrastructure projects are designed, financed, built, operated and maintained in a manner that meets the needs of our economies, environment, public health, safety and security. Early, ongoing, substantial, and meaningful state-federal consultation can provide efficiency, transparency, and predictability for states, as well as prevent delays, in the federal permitting and environmental review process.
3. Western Governors applaud the principles and intent of the National Environmental Policy Act (NEPA) which, since its enactment in 1970, has required that federal agencies consider how proposed federal actions may impact natural, cultural, economic and social resources for present and future generations of Americans. The process by which NEPA is implemented has been defined over time through regulations and guidance issued by the Council on Environmental Quality (CEQ).
4. Congress recognized the need for improved state-federal coordination in the NEPA process in the Fixing America's Surface Transportation (FAST) Act, passed in December 2015, which implements reforms regarding cooperating agency status and coordination with state and local governments. This statute should be consistently implemented.
5. NEPA mandates federal agency cooperation with state and local governments through the designation of qualified "cooperating agencies." Under existing law, an entity shall: (i) participate in the NEPA process at the earliest possible time; (ii) participate in the NEPA scoping process; (iii) assume, at the lead agency's request, responsibility for developing information and preparing environmental analyses; (iv) provide staff support upon request of the lead agency; and (v) use its own funds in its participation as a cooperating agency.<sup>1</sup>

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<sup>1</sup> 40 CFR § 1501.6(b).

6. The manner in which cooperating agencies are selected by a lead agency to participate in the NEPA process is unclear and inconsistently implemented. Additionally, a lead agency's determination of whether or not to grant cooperating agency status to a federal or non-federal governmental entity is not subject to judicial review.
7. State and local governments often have the best available science, data and expertise related to natural resources within their borders. In cases where the states have primary management authority, such as wildlife and water governance, states also possess the most experience in managing those resources and knowledge of state- and locality-specific considerations that should inform infrastructure siting decisions.

**B. GOVERNORS' POLICY STATEMENT**

1. Western Governors support improved infrastructure permitting and environmental review processes that result in more efficient reviews without shortening timelines for state input and consultation, or compromising natural resource, wildlife, environmental quality or cultural values.
2. Western states have a diverse mix of infrastructure needs spanning rural and urban areas and across multiple sectors of our economies. Infrastructure financing reforms should recognize this diversity and should avoid shifting costs to states or creating undue or disproportionate impacts to the infrastructure that connects the West's cities and rural communities with the nation and world. Federal infrastructure financing appropriations should acknowledge and support the diverse infrastructure needs facing western states.
3. The federal infrastructure permitting and environmental review process must be transparent, predictable and consistent for states and project developers. Federal processes must ensure that agencies set, and adhere to, timelines and schedules for completion of reviews and develop improved metrics for tracking and accountability.
4. Federal programs that increase bottom-up coordination among agencies, state and local governments and that foster collaboration among diverse stakeholders and project proponents can create efficiency and predictability in the NEPA process, including reducing the risks of delays due to litigation.
5. State, local and tribal governments, as well as their political subdivisions, have unique and critical duties to serve their citizens and should not be considered ordinary "stakeholders" for purposes of the NEPA process.
6. Federal agencies should be required to engage with states and state agencies in early, meaningful, substantive and ongoing consultation. Federal agencies should be required to invite all qualified state governmental entities to participate in the NEPA process as "cooperating agencies" and promulgate regulations to clarify consultation procedures and states' roles as cooperating agencies. The denial of any *bona fide* request for cooperating status should be accompanied by a clear and thorough explanation from the lead agency denying such request, citing specific factors the agency used in its determination. Such information should be recorded and maintained by the lead federal agency and collected by the Office of Management and Budget.

7. Western Governors encourage consistency in the implementation of NEPA within and among agencies and across regions. The federal government should identify and eliminate inconsistencies in environmental review and analysis across agencies to make the process more efficient.
8. Federal NEPA regulations should allow for existing state environmental review processes to supplement and inform federal environmental review under NEPA. Federal agencies, in their NEPA implementation guidelines, should encourage joint reviews with the states where possible.
9. The federal government should consider and apply peer-reviewed environmental science in a consistent manner across agencies as each undertake their NEPA reviews of different projects' impacts on and contributions to environmental quality. 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.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

*Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult [www.westgov.org/policies](http://www.westgov.org/policies) for the most current copy of a resolution and a list of all current WGA policy resolutions.*



## Policy Resolution 2018-06

### Transportation Infrastructure in the Western United States

#### A. BACKGROUND

1. The American West encompasses a huge land mass representing 2.4 million square miles or over two-thirds of the entire country. Over 116 million people live in these states and they reside in large, densely populated cities, smaller cities and towns and in rural areas.
2. Perhaps more than any other region, terrain and landownership patterns in the West underscore the purpose and vital need for a federal role in surface transportation. Western states are responsible for vast expanses of national highways and interstates that often do not correlate with population centers but serve as critical national freight and transportation routes for the nation.
3. Western states ports are national assets, moving needed parts and retail goods into the country, while also providing the gateway for our nation's exports. Although they benefit the entire country, the financial burden of developing, expanding and maintaining them to meet the demands of growing trade is almost entirely borne at the state and local level.
4. Jobs, the economy and quality of life in the West depend on high quality transportation infrastructure that efficiently, effectively and safely moves goods and people. Western transportation infrastructure is part of a national network that serves national interests. Among other things, transportation infrastructure in the West: moves agricultural and natural resource products from source to national and world markets; carries goods from western ports on western highways and railroad track to eastern and southern cities; and enables travelers to visit the great National Parks and other destinations in the West.
5. The transportation and transit needs in the West differ significantly from our eastern counterparts. Western states are building new capacity to keep up with growth, including new interstates, new multimodal systems including high-speed passenger rail and transit systems and increased capacity on existing infrastructure.
6. The infrastructure in the region is under strain from both increased movement of goods and people and from underinvestment in repair and new infrastructure needed to keep pace with this growth and change.
7. The vast stretches of highways and railroad track that connect the West to the nation do not have the population densities seen in the eastern United States.
8. Raising private funds to carry forward infrastructure projects in the rural West will be extremely challenging. The low traffic volumes in rural states will not support tolls, even if one wanted to impose them. Projects in rural areas are unlikely to generate revenues that will attract investors to finance those projects, even if the revenues are supplemented by tax credits.

**B. GOVERNORS' POLICY STATEMENT**

1. Western Governors believe there is a strong federal role, in partnership with the states, for the continued investment in our surface transportation network – particularly on federal routes and in multimodal transportation networks throughout the West that are critical to interstate commerce and a growing economy. These routes and networks traverse hundreds of miles without traffic densities sufficient to either make public-private partnerships feasible or allow state and local governments to raise capital beyond the historic cost share.
2. Western Governors believe the current project decision-making role of state and local governments in investment decisions should continue. Western Governors desire additional flexibility to determine how and where to deploy investment in order to maximize the use of scarce resources.
3. Western Governors believe regulation accompanying Federal Transportation programs should be reduced by expediting project delivery and streamlining the environmental review process without diminishing environmental standards or safeguards.
4. Western Governors believe that a viable, long-term funding mechanism is critical to the maintenance and expansion of our surface transportation network and encourage Congress to work together to identify a workable solution that adequately funds the unique needs of the West.
5. Western Governors believe in enhancing the ability to leverage scarce resources by supplementing traditional base funding by creating and enhancing financing mechanisms and tools that are appropriate for all areas of the United States, including those with low traffic densities where tolling and public private partnerships are not feasible.
6. Western Governors believe using the historic formula-based approach for the distribution of funds would ensure that both rural and urban states participate in any infrastructure initiative and it would deliver the benefits of an infrastructure initiative to the public promptly.
7. Western Governors believe the Highway Trust Fund (HTF) and the programs it supports are critically important to success in efforts to maintain and improve America's surface transportation infrastructure. Currently, the HTF will not be able to support even current Federal surface transportation program levels and will not meet the needs of the country that will grow as the economy grows. Congress must provide a long-term solution to ensure HTF solvency and provide for increased, sustainable federal transportation investment through the HTF.
8. Western Governors strongly encourage western states port operators and their labor unions to work together to avoid future work slowdowns by resolving labor issues well before contracts are set to expire. In recent years protracted disagreement in bargaining between parties has had an adverse impact on the American economy that should not be repeated.
9. Western Governors believe modern ports infrastructure is essential to strong national and western economy and urge Congress to fully fund the Harbor Maintenance Trust Fund and

to reform the Harbor Maintenance Tax to ensure western ports remain competitive. Furthermore, Western Governors believe the Federal government must work collaboratively with states, along with ports, local governments and key private sector transportation providers like the railroads, to ensure the necessary public and private investments to move imports and exports efficiently through the intermodal system.

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