

**United States House of Representatives Committee on Appropriations  
Subcommittee on Interior, Environment, and Related Agencies  
Public Witness Hearing**

**Testimony of James D. Ogsbury, Executive Director  
Western Governors' Association  
April 10, 2014**

Mr. Chairman and members of the Subcommittee, thank you for inviting the Western Governors' Association (WGA) to testify today. My name is James D. Ogsbury and I am the Executive Director of the WGA. WGA is an independent, non-partisan organization representing the Governors of 19 Western states and 3 U.S.-flag islands. We are pleased to have this opportunity to comment on the appropriations and activities of the Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, U.S. Forest Service and Environmental Protection Agency.

Western Governors recognize that certain agencies within this Subcommittee's jurisdiction are especially impactful to the West. These federal agencies have rich potential to supplement state efforts or impinge on state authority. They can exercise vital leadership or they can interfere with well-managed state activities. Accordingly, it is critical that state and federal agencies develop and maintain positive and cooperative working relationships. Western Governors believe that such cooperation is only possible when states are regarded as full and equal partners of the federal government in the development and execution of programs for which both have responsibility.

As you consider appropriations and policy directives for federal agencies, Western Governors urge you to take cognizance of states' authority in resource management and their potential to enhance the delivery of government services and protections to our citizens. Western Governors are strong and pragmatic chief executives, committed to judicious exercise of their power within constitutional and practical constraints. The following requests and recommendations are thematically related in that they commonly call for greater recognition of state authority and better utilization of state capabilities by the federal government.

With respect to funding levels of appropriated programs, WGA recommends the enactment and full funding of a permanent and stable funding mechanism for the Payment in Lieu of Taxes program administered by the Department of Interior. As you know, these appropriations do not represent a gift to local jurisdictions; rather they represent important (if inadequate) compensation for the disproportionate acreage of non-taxable federal lands in the West. Similarly, continued funding of the Secure Rural Schools program will help compensate communities whose timber industries have been negatively impacted by actions and acquisitions of the federal government.

Western states are investing enormous amounts of time, money and manpower in species conservation. It is only appropriate that federal agencies likewise commit sufficient resources for species protection, particularly on federal lands. If federal lands are inadequately managed, no amount of effort on state and private property will be sufficient to assure species' success.

Federal agencies should demonstrate their commitment to species preservation and recovery by committing adequate funding for conservation efforts on federal lands.

Part of the federal commitment to species conservation involves financial support for species management by state agencies through the State and Tribal Wildlife Grant program. Because state responsibilities for species conservation are increasing in number and complexity, the Subcommittee is urged to reject the \$8.7 million reduction to this program proposed by the Administration.

The Subcommittee is well informed regarding the pressing problem of “fire borrowing,” pursuant to which resources necessary for the reduction of wildfire threats are transferred to emergency firefighting activities, perpetuating a cycle of high fire risk and elevated emergency expenditures. Be advised that WGA is on record as supporting legislation that would solve the budgetary issue of fire borrowing by creating a funding structure similar to that used by the Federal Emergency Management Agency in its response to natural disasters.

During last year’s government shutdown, certain national parks were kept open through the initiative of states which undertook responsibilities of park management. The subcommittee is encouraged to provide the resources necessary to compensate those states for the costs they incurred in shouldering a federal obligation.

WGA understands that this Subcommittee is as interested in *how* funds are spent as it is in how much money agencies spend. The following recommendations are intended to help ensure that the taxpayer realizes a better return on the investment of limited discretionary resources. This goal will be more readily achieved to the extent that federal agencies better leverage state authority, resources and expertise.

Last year this Subcommittee included language in its report 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. Federal and state agencies need data-driven science, mapping and analyses to effectively manage wildlife species and their habitat. States possess constitutional responsibilities for wildlife management, as well as intimate knowledge of wildlife habitat and resources. In addition, they often generate the best available wildlife science. The use of state science should be more effectively utilized to both reduce total costs and increase the efficacy of federal wildlife management efforts. Accordingly, the Subcommittee is encouraged to reiterate and strengthen its report language regarding this issue for fiscal year 2015.

Western Governors believe that states should be full and equal partners in the implementation of the Endangered Species Act and should have the opportunity to participate in pre-listing and post-listing ESA decisions. The ESA 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 include partnership with states in the establishment of quantifiable species recovery goals, as well as in the design and implementation of recovery plans.

It is axiomatic that ESA listing decisions have dramatic impacts on vital state interests. Consequently, states should have the right to intervene in proceedings regarding the ESA. The Subcommittee is urged 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.

Several federal statutes – including the Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act – vest the states with the role of co-regulator with the Environmental Protection Agency. That role would be significantly enhanced by greater state representation on the Science Advisory Board (SAB), on which the agency relies to provide the scientific underpinnings of regulatory decisions.

The SAB was established by the Environmental Research, Development, and Demonstration Authorization Act of 1978 in accordance with the Federal Advisory Committee Act of 1972 (FACA) and has a broad mandate to advise EPA on scientific, technological, and social and economic issues. The SAB Charter defines the SAB as a scientific and technical advisory committee. Sections 5(b)(2) and 5(c) of FACA require the membership of an advisory committee to be “fairly balanced in terms of points of view represented and the functions to be performed.”

Despite the foregoing mandates and the tremendous value that would be added to SAB processes by state participation, states are woefully and demonstrably under-represented on the SAB, as well as on its standing and *ad hoc* committees. States are equipped and prepared to contribute their regulatory expertise, as well as their scientific resources and data, to SAB deliberations. Consequently, the Subcommittee is urged to ensure that EPA achieves more balanced SAB representation, to include state participation that constitutes no less than 10% of the membership of SAB committees, subcommittees and subject matter panels.

On March 25, the Administration unveiled a proposed rule of the Environmental Protection Agency and the U.S. Army Corps of Engineers intended to clarify the jurisdictional reach of the Clean Water Act. Many states have indicated concern that the proposed rule significantly expands the definition of “waters of the United States” and could impinge on state authority over the regulation of waters within their borders. WGA is concerned that states were insufficiently consulted in the development of this proposal and played no role in the creation of the rule, which has such major implications for states.

Congress intended that the states and EPA would implement the CWA in partnership, delegating authority to the states to administer the law as co-regulators with EPA. Accordingly, WGA encourages congressional direction to EPA to engage the states in the creation of rulemaking, guidance, or studies that threaten to redefine the roles and jurisdiction of the states. State water managers should have a robust and meaningful voice in the development of any rule regarding the jurisdiction of the Clean Water Act or similar statutes.

Solving many of the West’s challenges will require a broad view of the interrelated nature of natural resource problems. For example, federal underinvestment in the eradication of invasive species (like cheatgrass) and in the active management of national forests can result in increased severity of wildfires. This greater wildfire threat in turn poses greater peril to the

crucial of habitat of species (like the greater sage grouse) that states are working diligently to conserve.

Western Governors appreciate the enormity of your job, as well as your commitment to the provision of cost-effective government services. The foregoing recommendations are offered in a spirit of cooperation and respect, and WGA is prepared to assist you as appropriate as you discharge your critical and challenging responsibilities.

Thank you for your attention and consideration.