

**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  
March 18, 2015**

Mr. Chairman and members of the Subcommittee, I deeply appreciate your invitation to testify today on behalf of the Western Governors' Association (WGA). My name is James D. Ogsbury and I am the Association's Executive Director. WGA is an independent, non-partisan organization representing the Governors of 19 Western states and 3 U.S.-flag islands. I thank you for this opportunity to comment 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).

Together, the agencies within your jurisdiction wield significant authority over vast areas of the American West. How these agencies conduct their work has an enormous impact on individual states. The West is the epicenter of exceptional drought conditions, pervasive invasive species incursion and destructive wildfire. That is why the work of this Subcommittee is of such vital importance to Western Governors: it is your efforts, as you consider appropriations levels and policy directives, that set the stage for how these agencies will interact with other layers of government and the public.

I recognize that there is a certain tension between state and federal governments, one that is embedded in the fabric of our Constitution. It is equally clear that these different layers of government must have a close and productive working relationship if our citizens are to prosper and thrive. 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.

This can be easily demonstrated by examining the work being done by WGA's Drought Forum under the leadership of our Chairman, Governor Brian Sandoval of Nevada. Many areas of the West are experiencing severe and sustained drought conditions. State and federal cooperation – from data sharing to land management responsibilities – is critical to our understanding and response to these devastating drought conditions.

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 (PILT) program administered by the Department of Interior. These appropriations do not represent a gift to local jurisdictions; rather they represent 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) are critical to compensating communities whose timber industries have been negatively impacted by actions and acquisitions of the federal government. While authorization

for SRS expired on September 30, 2014, Western Governors request a one-year reauthorization of the Act and are encouraged by congressional expressions of support for the program. I am hopeful that this extension will take effect, and that you will consider full funding for SRS payments.

Western Governors understand and support the need for a permanent solution to the issues addressed by PILT and SRS. The current situation leads to uncertainty and frustration for local governments and funding complications each and every funding cycle. Western Governors are ready to assist in the development and execution of solutions to these complicated matters.

Another important responsibility of the Subcommittee is species conservation. Western states routinely invest enormous amounts of time, money and manpower in the management of wildlife protection and habitat conservation. It is also appropriate for federal agencies to provide sufficient resources for species protection, particularly on federal lands. When federal lands are inadequately managed, state and local efforts to protect habitat and species will not be sufficient to assure the success of these efforts. Federal agencies must demonstrate their commitment to species preservation and recovery by committing adequate funding for conservation efforts on federal lands.

The Subcommittee knows all too well the pressing problem of “fire borrowing,” by which the funding for routine Forest Service management activities is transferred to emergency firefighting activities. This short-sighted practice creates a dangerous cycle that must be eliminated. By diverting funding from management activities that reduce wildfire threats, this practice increases the fire risk on federal lands and all but ensures that future wildfires will be more damaging (and costly), especially in the current drought conditions the West is experiencing. WGA strongly supports efforts to solve the budgetary issue of fire borrowing, and would prefer that the federal government use a funding structure similar to that used by the Federal Emergency Management Agency (FEMA) in its response to natural disasters.

Section 8204 of the 2014 Farm Bill allowed Governors the opportunity to request that National Forest System lands within their states be considered for insect and disease designation. The Farm Bill authorized the appropriation of \$200 million to accomplish the work required under the statute. Treatment on these designations does not automatically occur. Many states, however, are already working with their regional foresters to start projects as soon as possible. This work will help reduce the threat of wildfires in areas of high risk. I am encouraged by the eagerness of the USFS to begin this effort and request that funding be appropriated at a reasonable and sustainable level.

Data for water management and drought response planning is critical to western states. I also request adequate funding levels for the Cooperative Water Program and National Streamflow Information Program (NSIP), both administered by the Department of Interior’s U.S. Geological Survey (USGS). The data collected by these programs is integral to water supply management decisions for states, utilities, reservoir operators and farmers. This information is particularly useful as drought persists in California, Nevada, the southern Great Plains, and other parts of the West. The data sources are also used for flood forecasts, making them essential to risk assessment as well as water management. These two USGS programs are important

elements of a robust water data management program in the western states, and provide needed support for drought mitigation efforts throughout the West.

Infrastructure management is another crucial element of drought response. EPA's Clean Water and Drinking Water State Revolving Funds (SRFs) provide the necessary support for communities to maintain and enhance their water infrastructure. The Western Governors' 2014 policy resolution, Water Resource Management in the West, supports adequate funding for SRFs.

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.

Western Governors appreciate your assistance in encouraging a positive relationship between the states and the federal government on the use of wildlife data. For the past two years, this Subcommittee has 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. Both levels of government 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 many cases, states generate the best available wildlife science. I encourage you to maintain this position and reiterate it in your Fiscal Year 2016 report to strengthen this important operating principle.

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

ESA listing decisions can have dramatic impacts on vital state interests, influencing a state's ability to conduct almost any activity – from road siting to new home construction to environmental projects. 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 (CWA), Clean Air Act and Resource Conservation and Recovery Act – vest the states with the role of co-regulator with the EPA.

The number of wild horses and burros on BLM lands is estimated by the agency to be almost double the current Appropriate Management Level (AML). Wild horse and burro populations in excess of AMLs can degrade rangeland, causing harmful effects on wildlife and

domestic livestock. This degradation also has implications for the protection of threatened and endangered species and other species protection efforts. WGA would support 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. Such a process would address both the long-term viability of wild horse and burro populations, and near-term concerns about the rangeland impacts of overpopulation.

Last year, the Administration unveiled a proposed rule of the EPA and the U.S. Army Corps of Engineers intended to clarify the jurisdictional reach of the CWA. 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 continues to be concerned that states were insufficiently consulted during the development of this proposal and played no role in the creation of the rule.

Congress intended for the states and EPA to implement the CWA in partnership and delegated 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 CWA or similar statutes.

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 protection of groundwater resources. I encourage you not to permit the use of appropriated funds for any activity that would implement a directive on groundwater management. Federal agencies should work with the states to identify ways to address their groundwater-related needs and concerns through existing state authorities. Such collaborative efforts will help ensure that federal efforts involving groundwater recognize and respect state primacy and comply with federal and state statutory authorities.

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 as appropriate as you discharge your critical and challenging responsibilities.

Thank you for your attention and consideration. I would be happy to answer any questions you may have.