State and Federal Water Policy Developments

CSG-West
Vail, Colorado
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Western States Water Council
Western States Water Council

- Advisory body to 18 western Governors on water policy issues
- Provides states collective voice
- Fosters collaboration
- Works in close cooperation with the Western Governors’ Association (WGA)
The future growth and prosperity of the western states depend upon the availability of adequate quantities of water of suitable quality.
Western states have primary authority and responsibility for the appropriation, allocation, development, conservation and protection of water resources.
Western States Federal Agency Support Team

A Declaration of Cooperation

Working Together for the Sustainable and Efficient Use of Western Water Resources

We, as representatives of our respective Federal agencies, do hereby declare our intent to cooperate as members of a Western States Federal Agency Support Team (WESTFAST) partnership. We will work together whenever and wherever possible throughout the 17 Western States to promote and educate the public on the benefits of sustainable and efficient use of water resources.

We declare that WESTFAST supports a continued commitment on the part of Federal, and State organizations; working with local, Tribal, and other stakeholders; to improve the effectiveness of collaboration to seek watershed solutions to water issues in the Western States. This effort emphasizes proactive, voluntary, participatory and incentive-based approaches to water resource management and conservation assistance programs throughout the Western States.

We hereby declare that we as WESTFAST partners will collaborate with the Western States Water Council to guide the development of an appropriate action plan for this partnership.

We hereby declare to support, in concept, the establishment of a Federal liaison position to work with the WESTFAST members and the Western States Water Council in developing a collaborative work plan to carry forward joint water resource initiatives. Contributory cost-sharing such a position will be based on authorized and available funds.
What Federal Policy Issues are you and your constituents most concerned about?
What federal regulatory issues related to water are you and your constituents most concerned about?

- EPA Waters of the United States Rule
- Treatment of Tribes as States under the CWA
- EPA Water Transfers Rule
- USFS Ground Water Directive
- USFS Ski Area Water Rights
- USBR Water Pricing Policies
- Corps Surplus Water and Water Pricing Policies
- FERC Hydro Relicensing
- BLM Fracking Rules
- Federal Reserved Rights and other federal water needs
- Tribal Reserved Water Rights
- Endangered Species Act Protections
Federal Water Policy Development

- Legislation
- Programs
- Policies
- Rules
- Regulations
- Directives
- Orders

- Shifting Social Values & Norms
- Questions of Legislative Intent
- Define Needs & Objectives
- Focus on Results
- Break Down Silos
- Maximize Efficient Use of Resources
- Develop Effective Partnerships
- Better Define Roles & Responsibilities
Water Data Exchange

Representational State Transfer (REST) Endpoint
http://www.state.us/webse rvices/GetSummary
REPORT – 2013 – Details

Allocation Data
- Owner
- Beneficial Use
- Status
- Priority Date

Diversions
Uses (withdrawal/consumptive)
Return Flows

FUTURE STEPS:
States plugged in, streamgauging, etc. federal data, too.
WHAT WILL IT PROVIDE?

Water Supply Summary: 24,000 acre-feet

Regulatory Summary:
- Groundwater Management Area
- Minimum Instream Flow Requirements

Water Use Summary: 2,850 acre-feet

Water Availability Summary: 7,550 acre-feet
Five states participated in the Analysis: ID, WY, UT, CO, and AZ.

Selected Groundwater Wells/Springs on USFS Lands

This analysis by five western states (Idaho, Wyoming, Utah, Colorado, and Arizona) concerns the Proposed US Forest Service (USFS) Groundwater Directive, which proposes a number of changes to the way that certain wells and springs are permitted and administered on USFS lands. At a recent Western States Water Council meeting, members were able to discuss some of their concerns regarding the directive with staff from the USFS Groundwater Program. They offered to work collaboratively with the Council to estimate the number of groundwater wells/springs that may be impacted by the directive, given their proposed monitoring criteria. For additional background information and to see specific language in the directive, you can review the USFS' website here.

Due to the differences in formatting, spatial resolution, and the completeness of each state's
Study showed only a subset of potential wells, and what may legally be withdrawn, not potential capacity of the well.
RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
WATER-RELATED FEDERAL RULES,
REGULATIONS, DIRECTIVES, ORDERS
and
POLICIES

Helena, Montana
August 11, 2014
• Increasingly federal regulatory initiatives and directives threaten principles of federalism
• Appropriately balance government responsibilities
• Recognize the authority of the States to govern
• Require substantive consultation with States
• State consultation should take place early in the policy development process
• Water rights are private property, protected and regulated under State law
• Water quantity regulation and management are the prerogatives of States
Nothing in any federal rule, regulation, directive, order or policy should affect, erode, or interfere with the lawful government and role of the respective States relating to:

- the appropriation and allocation of water from any and all sources within their borders;
- the withdrawal, control, use, or distribution of water;
- affect or interfere with any interstate compact, decree or negotiated water rights agreement;
- the application, development and/or implementation of rules, laws, and regulations related to water
Presidential Executive Order 13132, issued on August 4, 1999, requires federal agencies to “have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications...”;

Federal agencies with water related responsibilities should fully recognize and follow the requirements of Executive Order 13132 by establishing and implementing appropriate procedures and processes for substantively consulting with States, their Governors, as elected by the people, and their appointed representatives, such as the Western States Water Council, on the implications of their proposals and fully recognize and defer to States' prerogatives.
The Clean Water Act

• The Clean Water Act (CWA) is built upon the principle of cooperative federalism.
• This framework has resulted in significant water quality improvements.
• States have authority pursuant to their “waters of the state” jurisdiction to protect the quality of waters within their borders.
• Such jurisdiction generally extends beyond the limits of federal jurisdiction under the Clean Water Act.
• Federal efforts to clarify the extent of CWA jurisdiction following the U.S. Supreme Court’s decisions in *SWANCC* and *Rapanos* have failed to include adequate state consultation in their development, despite repeated requests from the Council to do so.

• Any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact states and alter the distribution of power and responsibilities....
• Section 101(b) supports the states’ critical role in protecting water quality by stating: “It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;” and

• Section 101(g) of the CWA further provides that the primary and exclusive authority of each state to “allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act;”
• In the West, water can be scarce and a variety of unique waterbodies exist, including but not limited to small ephemeral washes, effluent-dependent streams, prairie potholes, playa lakes, and numerous man-made reservoirs, waterways, and water conveyance structures.

• The considerable differences in hydrology, geology, and legal frameworks that exist among the western states mean that any effort to clarify CWA jurisdiction will invariably impact each state differently....
State Consultation

- As co-regulators, states are separate and apart from the general public, and deserve a unique audience with the federal government in the development and implementation of any federal effort to clarify or redefine CWA jurisdiction.

- Information-sharing does not equate to meaningful consultation, and requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states.
Conclusions

Congress and the Administration should ensure federal effort to clarify/define CWA jurisdiction:

- Acknowledge the inherent federalism implications
- Include robust and meaningful state participation and consultation
- Consider alternate ways of meeting federal objectives
- Give full force and effect to CWA Sections 101(b) and 101(g).
Finally

- Acknowledge that states have authority pursuant to their “waters of the state” jurisdiction to protect excluded waters, and that excluding waters from federal jurisdiction does not mean that they will be exempt from regulation and protection.