

**Written Testimony of the
WESTERN STATES WATER COUNCIL**

**Submitted to the
Senate Appropriations Committee
Subcommittee on Interior, Environment, and Related Agencies**

**Regarding the EPA Fiscal Year 2022 Appropriations
June 24, 2021**

Chair Merkley, Ranking Member Murkowski, and Members of the Subcommittee, on behalf of the Western States Water Council (WSWC) we welcome the opportunity to provide written testimony on federal agency activities and appropriations under the Subcommittee's jurisdiction. The WSWC is a government entity advising western governors of water policies and programs. Members are appointed and serve at the pleasure of their respective governors.

Environmental Protection Agency

Federal-State Relations

Federal agencies' coordination and collaboration with States is a key element of the Clean Water Act's (CWA) regulatory federalism. States are partners and not stakeholders. When it comes to protecting the Nation's water quality, we strongly urge continuing appropriations to support interagency coordination and consultation at the federal, state, and tribal levels.

States are primarily responsible for managing water resources and water quality within their borders, and most States employ delegated authority under the CWA. This state-federal relationship is especially important in light of the announced review of the CWA Section 401 Implementation Rule and the definition of "Waters of the United States" (WOTUS) under the Navigable Waters Protection Rule (NWPR). While the Environmental Protection Agency (EPA) outreach regarding NWPR development was unprecedented, similar involvement by States regarding implementation of State 401 Certification authority was lacking. The Council maintains that state engagement and meaningful state consultation regarding the review and implementation of these rules, and any potential changes to these rules, is critical.

The Council has been involved in a support role with EPA and the U.S. Geological Survey (USGS) in efforts to improve mapping of the Nation's waters and wetlands, and we urge the Subcommittee to provide the resources necessary to develop the data needed for decisionmaking. Some of the friction regarding WOTUS is due to the lack of common baseline data and definitions for the Nation's waters. We strongly support mapping efforts. We recognize the importance of science and the interconnected nature of surface water, groundwater, and wetlands, while also recognizing the Congress and Supreme Court have limited the scope of federal CWA jurisdiction. States have authority to protect all waters within the State. EPA support for state programs, delegated or otherwise, should not be affected by questions related to federal jurisdiction.

States maintain primacy over groundwater management and protection. As continued drought forces many States to rely more heavily on groundwater resources, the nexus between groundwater and surface water is becoming increasingly apparent and important. The Council asserts that any federal strategy to protect groundwater quality must recognize and respect state primacy and be built as a genuine federal/state partnership. States recognize the importance of effective groundwater management and are in the best position to protect groundwater quality, as well as allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances. Working cooperatively with their federal partners, states have shown that they have the ability and authority to address federal needs regarding groundwater within existing legal frameworks.

Infrastructure

Water infrastructure improvements are a continuing chronic need across the country, and especially in rural and tribal areas across the West. Federal funding is critical for the Clean Water and Drinking Water State Revolving Funds (SRFs), the Water Infrastructure Financing and Innovation Act (WIFIA), and State and Tribal Assistance Grants for ensuring communities have access to clean, safe and reliable drinking water and wastewater services. The Council supports adequate funding for these programs to carry out their intended purposes.

EPA's SRF programs provide states with capitalization grants that are leveraged with state contributions to offer financial assistance to cities, towns, communities, and others for the planning, design, construction and rehabilitation of built and green water and wastewater-related infrastructure to improve source and drinking water quality. These programs are one of the principal tools that states use to pursue the goals of the Clean Water Act and Safe Drinking Water Act. The Nation's wastewater and drinking water infrastructure is aging and in need of repair and replacement. To the extent federal law has established certain nationwide levels of treatment for drinking water and wastewater, the federal government has a corresponding obligation to provide states with the necessary financial and technical assistance needed to comply with such requirements, including the appropriation of adequate funding for SRF capitalization grants.

New competing water and wastewater infrastructure funding programs should not come at the expense of the SRFs, which are a proven model for addressing water and wastewater infrastructure needs. We urge the Subcommittee to ensure that stable and continuing federal appropriations are made for SRF capitalization grants, WIFIA loans and State and Tribal Assistance Grants at levels that are adequate to help States address their water infrastructure needs and protect public health and the environment for the benefit of the people.

Congress has approved a several requirements on the states' management and use of SRF funds, including but not limited to mandating the use of a percentage of appropriated funds for principal forgiveness, negative interest loans, grants, or a combination thereof. Funding is also set aside for green infrastructure, water or energy efficiency, or other environmentally innovative activities. These and other requirements, often well-intended, are generally aimed at advancing policy objectives that are unrelated or contrary to the SRFs' primary purpose of providing funding for basic water infrastructure. They also reduce the flexibility of the States to manage SRFs in a cost-effective manner and represent unfunded federal mandates that impose significant regulatory

burdens, make state SRF programs less attractive to local entities, and reduce the capacity of a State to leverage their SRF programs and address infrastructure needs. SRF programs should allow States greater flexibility and require fewer restrictions.

Thank you for the opportunity to provide written testimony.