

On June 30, the Western Governors' Association (WGA) held the first session of its virtual annual meeting. Executive Director Jim Ogsbury opened the meeting and introduced each of the governors. WGA Chair Oregon Governor Kate Brown addressed the attendees and highlighted governors' commitment to "set aside our political difference to help the entire region succeed." She emphasized the collaborative and economic power of the WGA *Electric Vehicles Roadmap Initiative* and released a special report on the initiative. She also spoke about abandoned mines, strategic minerals and innovation in the energy sector.

In his remarks, Idaho Governor Brad Little, the incoming WGA Chair, declared: "There is nothing more essential to our way of life or Idaho's future than clean abundant water." He went on to talk about the importance of agriculture and water infrastructure. WGA's new Vice Chair, Colorado Governor Jared Polis, addressed the need for practical solutions for a more resilient future and developing resilient communities. He noted the "once in a generation" opportunity to make investments with federal stimulus spending and said one of Colorado's priorities is implementing the state water plan.

The virtual gathering included roundtable discussions with Energy Secretary Jennifer Granholm and Secretary of the Interior (DOI) Deb Haaland. Granholm, a former governor of Michigan, said that she could relate to the challenges governors face. She promoted the President's American Jobs Plan, proposing billions of dollars for clean energy, including efforts to cut solar and hydrogen energy costs. It includes grants to states and tribes for clean energy, proposed funding for new nuclear and carbon storage projects, as well as electrical transmission grid updates (specifically mentioning risks from fires and freezing temperatures). She stated: "You have been leading the charge as governors toward this clean energy transition. I've been watching as WGA governors have really moved the entire region forward.... You're demonstrating what is possible can be done together, in a bipartisan way."

During a roundtable discussion, Utah Governor Spencer Cox, noted: "The process of permitting for transmissions lines on public lands, including to expand electric vehicle charging, is incredibly expensive and cumbersome. I'm hoping you can help us reconcile those goals and interests."

North Dakota Governor Doug Burgum declared: "The top line for North Dakota is the words innovation versus regulation.... [Innovation] requires research and development (R&D) dollars and with that, we think we can achieve the goals or even exceed goals that the nation has set. We think regulation will raise the cost and lessen the chance of us achieving those goals." Over-regulation is an obstacle to innovation, he said. North Dakota has the capacity to sequester/store all the nation's carbon dioxide emissions for 50 years. He also noted that we need both power lines and pipelines to sustain our energy use. Burgum referred to the extreme drought conditions in his state, with some areas the driest recorded, and related wildfires consuming ten times the acreage lost in 2020. He highlighted the \$870M Fargo-Moorehead flood protection project and related public private partnership involving the state and local interests, with the U.S. Army Corps of Engineers, expediting its completion in 6 years, as opposed to 15 years. He added that WGA is an incredible and invaluable forum for exploring best practices and lessons learned.

Governor Polis and Governor Little both noted the need to streamline the environmental review process under the National Environmental Policy Act (NEPA), both for clean energy projects and the mining of strategic materials. Little added that Idaho is developing the first domestic cobalt mine in the United States.

Wyoming Governor Mark Gordon asserted that Wyoming and the West help power the nation. A next generation nuclear power plant demonstration project is being built on the site of coal fired plant, and the state will also host a carbon capture facility. Wyoming has a "boots on the ground, get things done attitude." He also mentioned the importance of wildlife migration corridors and protecting private property rights as well as recreational opportunities.

In prepared remarks, EPA Administrator Michael Regan declared "I think we can all agree, whether its methane leaking from oil and gas wells, or dangerous pollutants reaching into waterways, we all have a stake in the health of our environment. We also all have a stake in our economy and the well-being of our communities. I

believe these values will make for a successful partnership.” He emphasized a commitment to cooperation between the Administration and States on environmental policy, stating that the federal-state partnership is critical to success. “I understand how EPA actions can help or hurt the federal state partnership,” noting his experience as director of the North Carolina Department of Environmental Quality. He recognized the serious drought and wildfire season facing the West. He addressed water infrastructure stating that the Biden Administration has asked for \$111B for water and wastewater projects and to remove lead pipes, making all of our systems more resilient. He specifically referred to a \$560M Water Infrastructure Finance and Innovation Act (WIFIA) loan for Fargo, North Dakota.

Regan stated that he was looking forward to strengthening state and tribal authority under Section 401 of the Clean Water Act, as well as working closely with states to address per- and polyfluoroalkyl substances (PFAS), confronting this issue head on, beginning with standards for P4 and P5. He did not mention revisiting the definition of Waters of the United States, nor the Navigable Waters Protection Rule. He concluded, “We all have a stake in the health of our environment.”

Governor Michelle Lujan Grisham introduced Secretary Haaland as a beloved New Mexican, and remarked that WGA is an effective bipartisan group interested in partnering with Interior to address public land challenges. Haaland noted the Administration’s FY2022 budget demonstrates a commitment to natural resources and the environment. The American Rescue Plan is still an important step with \$4.2B for all Indian Affairs programs. She added the Administration is working towards building a clean energy economy and addressing drought and severe wildfire condition, saying that climate change contributes to historic drought. There is no easy fix, but Interior is taking drought seriously and working closely with other agencies to get through this tough water year and beyond, with increases in funding for drought and other natural hazards. Haaland noted that wildfire does not always get the attention it deserves, adding that 20 million acres burned in 2020. The President’s request includes \$1.1B for Interior’s wildland fire work. Haaland remarked that Interior is working alongside states to manage invasive species and co-chairs the National Invasive Species Council.

With respect to the President’s American Jobs Plan, she said that it includes much needed investments in a profitable and equitable clean energy economy, with significant steps to advance renewable energy opportunities on public and tribal lands thoughtfully, with clean energy and transmission projects. It also includes billions for plugging abandon wells. Interior is the steward of lands and waters that must sustain us and generations to come. She said that the Great American Outdoors Act will provide \$1.9B for new climate-related investments. Interior is studying how best to build resilience. She mentioned the America the Beautiful 30x30 Initiative to protect 30% of U.S. lands and waters by 2030, and committed to an inclusive and collaborative process that addresses local, state and tribal interests. She shared that she comes from a family that farms and ranches and understands the challenges facing the West.

Governor Lujan Grisham thanked Haaland for “leaning in” on oil and gas leasing moratorium issues, noting governors were anxiously awaiting a related DOI report. She also praised the initiative for capping abandoned wells. Grisham has issued an executive order creating a state 30x30 initiative. Some governors remain wary of how terms in the initiative will be defined.

Colorado Governor Jared Polis declared that the location of the Bureau of Land Management in Grand Junction has been a great asset to have in the West. He said it is good for agency morale and retention, highlighting Colorado’s great quality of life. He celebrated wolf reintroductions, with the first wolf cubs born in Colorado in 80 years. He also mentioned the addition of wolverines and black-footed ferrets, adding that experimental populations provide needed flexibility in wildlife management, while working together to restore threatened and endangered species populations and the environment.

Oklahoma Governor Kevin Stitt raised concern over the *McGirt v. Oklahoma* Supreme Court decision and tribal criminal jurisdiction on 1907 tribal reservations that were never dis-established. The decision impacts the sovereignty of the state and has created serious public safety concerns. Moreover, the State views *McGirt* as a very narrow criminal decision, but Interior is now recognizing tribal boundaries and jurisdiction over mining projects, leaving companies “confused.” Stitt shared that he is a member of the Cherokee Nation, and that 1.5 million non-native Oklahoman’s live within the newly recognized reservation boundaries, creating sovereignty questions and issues.

Haaland declared that the Office of Surface Mining will exercise jurisdiction over Indian lands, given current legal advice. "I know that is not what you want to hear and we have and will reach out." Interior is working with the Department of Justice to ensure consistency their actions are consistent with the Supreme Court decision. She also addressed Governor Polis stating that the Biden Administration is committed to unleashing the science – regarding the Endangered Species Act, wildlife corridors, renewable energy, etc. "We are happy to work with you, and will be in touch on specifics. You have a partner here."

North Dakota Governor Doug Burgum referred to a May 6 WGA letter on the 30x30 Initiative that he characterized as an aspirational goal, adding the citizens of our states value clean air and clean water. The letter reads: "It is also critical to ensure that a conservation strategy does not disproportionately affect specific states or regions. A strategy that relies heavily on federal land would disproportionately affect western states, given the high percentage of western lands under federal ownership.... The 30 by 30 proposal has significant implications for state sovereignty and the lives of our constituents." WGA has called for close consultation with States as the Administration seeks to implement the initiative.

On July 1, day two of the meetings, U.S. Department of Agriculture (USDA) Secretary Tom Vilsack addressed the governors. He was introduced by Idaho Governor Brad Little, who highlighted USDA's Shared Stewardship Strategy calling for collaborate on land management practices and priorities. He also mentioned USDA's Rural Development Agency and its critical importance with the roll out of broadband in the West. Secretary Vilsack was also welcomed as a former governor of Iowa, and recognized for his earlier service as USDA Secretary in the Obama Administration. Vilsack addressed the pandemic damage to agriculture-based economies due, and USDA efforts to provide relief to different sectors or elements of agriculture and forestry. He mentioned opportunities to provide for the dairy industry, through a donation program to encourage some equity for dairy farmers with USDA purchased food boxes and cheese. USDA uses institutional/school lunch purchases of food to provide markets. There is some help for organic producers, as well as some compensation for livestock destroyed with no market during the pandemic. The focus is looking forward to Build Back Better, with expanded market opportunities for socially disadvantaged communities and to expand processing capacity for cattle so producers and processors can profit. He talked about bringing good paying jobs back, as well as achieving more flexibility with more small and mid-size producers and local/regional distributors.

Vilsack addressed Forest Service and wildfire questions. He noted expanded broadband is part of the American Jobs Plan, and he committed USDA resources necessary to develop rural areas. The Administration wants \$100B to expand high speed broadband. The Secretary also mentioned bipartisan efforts led by Senators Mike Crapo (R-ID) and Michael Bennet (D-CO) to address immigration issues as they relate to jobs in agriculture. He remarked that there is a need to modernize the agricultural work force system and respect hard working farm workers. This issue has been "simmering" since 1988. USDA is providing technical assistance for producers with micro loans and through Natural Resources Conservation Service (NRCS) programs. USDA is also interested in promoting urban agriculture and is working on ten pilot scale projects.

Governor Burgum expressed gratitude for Vilsack's understanding of the role of the States. He stated that North Dakota is facing severe drought – the driest on record. It has contributed to grassland wildfires with over 1000 incidents, beginning first back in January near the entrance to Theodore Roosevelt National Park. Thanks to USDA firefighters and local volunteers and great team work the town of Medora was saved. Across the state, dryland, row crops and livestock producers are all suffering. He called on USDA to open Conservation Reserve Program (CRP) lands for grazing, while waiting for late-season hay or alfalfa if we do get some rain. North Dakota is in the middle of waterfowl migration routes for many species, and he asked that USDA expand CRP use for wildlife. Understanding there are budget challenges, Burgum asked for expanding trail opportunities with local and USDA partnerships and funding. He referred to a constrained future and asked USDA to collaborate on carbon sink opportunities with farmers and ranchers, while keeping research and development (R&D) going forward as it relates to renewables, waste heat, greenhouse gases and uses of CO2. Crops grow 30-100% faster in greenhouses with enhanced CO2.

Secretary Vilsack said he was "fully aware" of drought, and suggested that a \$10M Wildfire and Hurricane Indemnity Program used in Klamath River area might be used in North Dakota. USDA's budget includes \$40M for Environmental Quality Improvement Program (EQIP) projects to mitigate drought with conservation practices. There are also Farm Service Agency (FSA) programs, and continuing R&D dollars. He added that national programs for addressing the impacts of hurricanes and floods are not effective for drought. Extended drought is

the new normal. Regarding wildfire, Vilsack noted the need for additional forest treatment and upscaling pre-preparation activities. The American Jobs Plan addresses greening infrastructure, including forest treatment. He agreed that there are carbon capture opportunities for farmers and ranchers, as well as action to encourage individual farmers and aggregations of producers to adopt sustainable practices. Some opportunities may involve the transport of CO<sub>2</sub> from ethanol productions.

Burgum said that North Dakota hit the geological jackpot with the Bakken formation that can be used to store CO<sub>2</sub>, adding that they already have a regulatory framework for sequestration. North Dakota has set a goal to be carbon neutral by 2030.

Governor Polis stated that it is hot again in Colorado with temperatures over 100 degrees. “We are all seeing the impact of climate change.” He said that 40% of Colorado is USFS and BLM land, and that the federal government needs to “step up” on fire control with assistance, while pursuing opportunities to reimagine forest and land management. He referred to USFS land leased to ski resorts and sustainable recreation, while calling for opening access to public lands as a driver of local economies.

Colorado has established a new Agricultural Drought and Climate Resiliency Office, and noted improved land management is a big part of climate resilience that USDA can encourage resilience with incentives. Agriculture is part of the solution and not the problem. He highlighted USDA work on industrial hemp rules adding there is a need for uniform federal rules.

Vilsack emphasized shared stewardship efforts will continue and expand on past success. He highlighted the creation of a Conservation and Climate Corps (CCC) to help provide better opportunities for outdoor recreation, the use of the Great American Outdoors Act and funding for 500 projects through the reauthorized Land & Water Conservation Fund. He stressed the importance of the fire treatment side of forest management, and the need for more markets for the wood we do produce, such as the use of structural cross-laminated timber that chars but doesn't burn.

As WGA's incoming chair, Governor Little talked about his Working Lands, Working Communities Initiative. He told Vilsack, “We want to be partners on the next Farm Bill.” He added he hoped the next U.S. Forest Service Chief would emphasize cooperative programs and the Good Neighbor Initiative. It will take all states and federal government working together to minimize the impact of drought and climate change. He said we need to manage recreation lands and praised the Payette Forest employees that have done an incredible job on trails, with even handicapped access. He observed that timber markets have been unbelievable – depending on if you are buying or selling. There is a need to match supplies and demand off private, state and federal lands, as well as a need for new sawmills.

Vilsack stated, “My heart goes out to all those dealing with the consequences of a very very dry year. We lost 12 people last year, and a smoke jumper this year.” We have to treat forest sustainably. He added infrastructure is more than bridges and roads, but also broadband and our forests.

The meeting also included messages from individual governors and an panel examining economic prosperity in western states, with U.S. Department of Commerce Secretary Gina Riamondo on the effects COVID has had on state and local economies, and steps states and the federal government can take to promote economic vitality throughout the West.

## **WGA Resolutions**

The Governors updated and renewed five resolutions on water resource management, cleaning up abandoned hardrock mines, water quality, transportation infrastructure, and disaster preparedness and response.

Policy Resolution 2021-08, Water Resource Management in the West, revises several paragraphs on infrastructure needs and federal support for infrastructure investments. “Aging infrastructure for existing water and wastewater facilities and the need for additional water projects cannot be ignored. Water delivery and wastewater infrastructure investments are essential to our nation's continued economic prosperity and environmental protection, and they assist states in meeting federally-mandated standards under the CWA, SDWA, and other

federal statutes. Western Governors support efforts to make the most of existing infrastructure while seeking creative solutions to add more infrastructure with limited resources.... Congress should provide adequate support for the CWA and SDWA State Revolving Funds. Further, Congress should support restoration and repair of aging water infrastructure, commit to aiding efforts to address the recurring drought conditions across the West, and fully utilize the receipts accruing to the Reclamation Fund for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water- related needs, including the construction of Congressionally-authorized Bureau of Reclamation rural water projects and facilities that are part of Congressionally- authorized Indian water rights settlements. Congress should authorize federal water resources development legislation on a regular schedule and appropriate sufficient funding so that all projects and studies authorized in such legislation can be completed in a timely manner.”

The position adds language supporting Reclamation and Corps infrastructure programs. “The Bureau of Reclamation’s WaterSMART Program provides valuable support to states, tribal nations, water and irrigation districts, and local entities to invest in water conservation projects and modern water delivery infrastructure. The U.S. Army Corps of Engineers’ Planning Assistance to the States (PAS or “Section 22”) Program also funds critical work in western states as a program focused on comprehensive water resources planning.”

The updated position provides greater detail on hydropower resources. “In consultation with affected states, Congress and the Administration should optimize federally-owned or licensed hydropower resources by increasing turbine efficiency and investing in conduit hydropower in irrigation canals and wastewater systems consistent with existing water diversions. Congress and the Administration should also authorize and implement federally-owned or licensed hydropower projects and programs through efficient permitting processes that: utilize new technology to improve renewable electric generation capacity, promote economic development, are consistent with the needs of native fisheries and riverine processes, and safeguard and solidify states’ permitting and certification authority and indigenous peoples’ rights.”

Under integrated water management, the paragraph on energy development and the water-energy nexus emphasizes opportunities to coordinate efforts. A new paragraph on forest health and soil stewardship talks about land management practices and the effects of wildfire on reservoir management and water quality. Notably, the section on drought preparedness and response, which referenced WGA’s Drought Forum, has been removed.

On water data, the position expanded support for federal programs and types of basic water data needed for sound water management. “Western Governors support federal programs dedicated to the improvement of data on snowpack, streamflow, soil moisture, and forecasting, including the Natural Resources Conservation Service’s Snow Survey and Water Supply Forecasting Program; the National Oceanic and Atmospheric Administration’s weather and hydrology-related data collection, monitoring, and drought information programs, including the National Integrated Drought Information System; the U.S. Geological Survey’s Groundwater and Streamflow Information Program; and the National Aeronautics and Space Administration’s National Land Imaging (Landsat) Program. Western Governors further support federal efforts to coordinate water data gathering and information programs across multiple agencies.

Policy Resolution 2021-09, Cleaning Up Abandoned Hardrock Mines in the West, clarifies issues of Good Samaritan liability and encourages pilot programs of abandoned mine cleanup led by state agency project managers on public lands. The position added a paragraph acknowledging a 2020 report estimating that it would take up to 500 years for the Bureau of Land Management just to confirm the presence of physical or environmental hazards at 66,000 hardrock mines, given the agency’s current budget and staff resources. WGA supported increased federal funding to address this backlog through both federal and state programs. The position also adds paragraphs acknowledging and supporting EPA’s recommendation of using abandoned hardrock mine sites as locations for developing solar projects, allowing those sites to be productive and generate energy.

Policy Resolution 2021-10, Water Quality in the West, adds language from the Clean Water Act (CWA) to clarify Congressional policy to recognize and protect the states’ primary responsibilities and rights “to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources....” It emphasizes the CWA policy that the states’ authority to allocate quantities of water should not be impaired by the CWA, and that “Federal agencies shall co-operate with state and local agencies, including authorized tribes, to develop comprehensive solutions to prevent, reduce, and eliminate

pollution in concert with programs for managing water resources.” WGA urges EPA and the Corps to “engage the states as sovereigns and co-regulators in the development of any rule, regulation, policy, or guidance addressing the definition of ‘waters of the United States’ as that term applies to the jurisdictional scope of the CWA. Specifically, federal agencies should engage with states – through Governors or their designees – with early, meaningful, substantive, and ongoing consultation that adequately supports state authority. Such consultation should begin in the initial stages of development before irreversible momentum precludes effective state participation.”

The section on groundwater has been updated to acknowledge the recent U.S. Supreme Court decision in Maui. “States have primary authority over the protection of groundwater and exclusive authority over the management and allocation of groundwater resources within their borders. The regulatory reach of the CWA does not extend to the management and protection of groundwater resources unless the activity in question is the functional equivalent of a direct discharge from a point source. In addressing pollution to groundwater resources, the federal government must recognize and respect state authority, work in collaboration with states, and operate within the designated scope of federal statutory authorities. EPA should engage with states with early, meaningful, substantive, and ongoing consultation on any regulatory processes focused on groundwater resources or the development and application of the meaning of ‘functional equivalent.’”

The section on states’ CWA §401 certification authority has been updated to reflect recent and anticipated future changes in federal rules. “Section 401 of the CWA requires applicants for a federal license to secure state certification that potential discharges from their activities will not violate state water quality standards. Section 401 embodies cooperative federalism. States’ mandatory conditioning authority should be retained in the CWA.”

The section on water transfers has also been revised. “Western Governors support EPA’s current Water Transfers Rule, which exempts water transfers between waters of the United States from the CWA National Pollutant Discharge Elimination System (NPDES) permitting requirements when such transfers do not involve the addition of any pollutants. States possess adequate authority to address the water quality issues associated with such transfers. Western Governors believe that transporting water through constructed conveyances to supply beneficial uses should not trigger duplicative NPDES permit requirements.”

The section on nutrient pollution has removed the emphasis on jurisdictional issues over non-point sources and focuses instead on state-federal cooperation to address impairments and the need for wastewater treatment infrastructure. The section on stormwater pollution in ephemeral streams has been modified to emphasize state authority and the need for federal collaboration with state agencies to support tailored approaches that reflect the unique management needs of ephemeral streams. The section on emerging contaminants has been revised to include PFAS and cyanotoxins produced by harmful algal blooms, and emphasizes the need for continued investment in scientific research regarding the human health effects of these contaminants.

The section addressing federal deference to state programs that ensure hydraulic fracturing does not impair water quality has been removed from the position. Under water quality monitoring and data collection, WGA urges “the federal government to support and develop programs that can be utilized by states for water resources management and protection and to provide assistance to states in developing innovative monitoring and assessment methods....”