



## WESTERN GOVERNORS' ASSOCIATION

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November 4, 2010

The Honorable Lisa Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson,

On behalf of the Western Governors' Association, we are writing to express our concern over the possibility that the Environmental Protection Agency (EPA) may review 40 C.F.R. 122.3(i), otherwise known as the "water transfers rule." As you know, the rule clarifies that water transfers are exempt from National Pollutant Discharge Elimination System (NPDES) permit requirements under Section 402 of the Clean Water Act (CWA). Western Governors support the rule in its current form and believe that transporting water through constructed conveyances to supply beneficial uses should not trigger NPDES permit requirements simply because the source and receiving waters contain different chemical concentrations and physical constituents.

Historically, water transfers have not been subject to the NPDES Program and the federal government has deferred to the states' control of water allocation and administration within their borders. Moreover, the CWA does not contain a clear statement from Congress that it intended the NPDES Program to govern transfers. To the contrary, Section 101(g) expressly states that the CWA will not supersede or abrogate the rights of states to allocate water quantities within their jurisdiction, while also protecting water rights established pursuant to state law. NPDES permitting requirements could have the effect of forcing water suppliers to forgo the full exercise of their state water rights which would directly abrogate or supersede state water law and the allocation of state water rights. This would contradict Section 101(g) and upset the long-established federal-state balance regarding water quality protections and rights to water use.

The CWA does not limit the ability of States to use state authority to address water quality issues associated with water transfers. In the arid West, water is not only scarce but often located in the "wrong place." This means that western states must rely on thousands of interstate, interbasin, and intrabasin transfers to move billions of gallons of water to satisfy domestic, agricultural and industrial needs. Water managers in the West need the flexibility to move waters, and state control is an appropriate way to address the water quality and quantity challenges

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relating to arid and semi-arid climates. This need for flexibility is compounded by the West's vast geography, growing urban areas and a large rural population.

Thank you for considering our concerns and comments. We have attached the position of our affiliate, the Western States Water Council, for your consideration. We look forward to working with you and the EPA to meet our water quality and water supply needs in the most efficient and effective manner possible.

Sincerely,



C.L. "Butch" Otter

Governor of Idaho

Lead Governor for Water



Bill Richardson

Governor of New Mexico

Lead Governor for Water



M. Michael Rounds

Governor of South Dakota

Lead Governor for Water



Bill Ritter, Jr.

Governor of Colorado

Lead Governor for Water

Attachment