



Western Governors' Association Policy Resolution 08-18

Water Quality Issues in the West

A. **BACKGROUND**

1. Clean water is essential to the quality of life and health of the citizens of the Nation. In the arid West, water is a scarce and precious resource that must be managed with sensitivity to all social, environmental, and economic values and needs.
2. Much progress has been made toward the goal of controlling water pollution under the Clean Water Act. Western states have made great strides in coordinating water quality and water quantity decision making and have developed legislative and planning strategies for promoting these goals, along with water conservation and reuse.
3. Authorization for federal funding of state loan funds expired in 1994. Attempts to reauthorize the Clean Water Act since then have failed. Congress has provided states money in the interim; however, states fear that without reauthorization, SRF funds could eventually dry up given threats by some congressional leaders not to appropriate money for unauthorized programs.
4. The experience of states in managing programs under the Clean Water Act over the last several years leads to the conclusion that the Act does not require a significant overhaul, but that it does need refinement, in particular with regard to unique conditions in the arid West. Other specific refinements include the Good Samaritan Cleanups of Abandoned and Inactive Mines referred to in WGA Resolution 07-08 and State Authority Regarding the Federal Hydropower Licensing Process in WGA Resolution 05-14.
5. Federal goals, statutes and programs do not always recognize the specific conditions and needs of the West. For example, the strict interpretation of the policy goals in the Clean Water Act to eliminate pollutant discharges and to make all waters suitable for the propagation of fish, shellfish, and wildlife and provides for recreation in and on the water does not recognize the water use challenges in the arid West. Where water is scarce even wastewater becomes a valuable resource to both humans and the environment, and states need to have more flexibility to determine how to best maximize those resources. This is particularly true where states determine it is appropriate to set uses and standards for ephemeral streams, effluent dominated low flow waterways, and man-made water conveyances.
6. EPA's Section 319 Program supports demonstration projects for the abatement of nonpoint source pollution including from agricultural, silvicultural, abandoned mine land, and urban nonpoint sources. Additionally, many states use 319 funding for core staff to conduct Total Maximum Daily Loads (TMDLs). Some have suggested that the 319

program is duplicative of Farm Bill programs and should therefore be reduced or eliminated.

7. Section 518 of the Clean Water Act authorizes the EPA Administrator to treat an Indian tribe as a State for purposes of developing and administering a §303 water quality standards program and a §401 certification program if the tribe meets certain conditions. Section 518(d) specifically provides that Indian tribes and states can enter into cooperative agreements in order to ensure consistent implementation of the Act. Under EPA regulations (40 C.F.R. § 131.7), when disputes arise because of differing water quality standards, attempts shall be made to resolve the dispute through discussions between the parties.
8. The Clean Water Act requires states to identify and list lakes, rivers, and streams that do not meet water quality standards. According to the EPA, states nationally have identified 21,000 such polluted river segments, lakes, and estuaries accounting for over 300,000 river and shore miles and 5 million lake acres, or over 40% of the assessed waters. For each of those listed water bodies, a state is required to establish a total maximum daily load (TMDL) for each non-attainment pollutant, including non-point source pollutants, at a level necessary to ensure that applicable water quality standards can be attained. A TMDL is the amount of pollution a water body can absorb and still support uses, such as drinking water, aquatic life, and recreation. While states have primary responsibility for establishing TMDLs, the Environmental Protection Agency (EPA) is charged with ensuring that states comply with the law and establish TMDL programs. The EPA is required to establish TMDLs if a state does not comply with the Act.

B. GOVERNORS' POLICY STATEMENT

1. The Governors support reauthorization of the Clean Water Act consistent with the recommendations set forth in this policy resolution.
2. In the implementation of Clean Water Act provisions, the states should retain primary jurisdiction over related water resource allocation decisions, including how to most appropriately balance state water resource needs with Clean Water Act objectives.
3. Pollutants from stormwater need to be addressed with application of Best Management Practices implemented through an enforceable permitting program. However, stormwater discharges to "waters of the United States" which are dry streams in arid regions may pose substantially different environmental risks than do the same discharges to perennial surface waters. States must have the ability to require greater management of stormwater pollution on those water bodies that may require it, and a tailored approach that reflects the different risk posed by discharges to ephemeral waters.
5. The arid West includes a wide variety of waters: small ephemeral washes and large perennial rivers; effluent-dependent streams and wild, scenic rivers; as well as natural streams and lakes and man-made reservoirs and water conveyance structures. The federal government must provide flexibility to states when adopting water quality

standards—both use designations and associated water quality criteria—that are appropriately tailored to the unique characteristics of Western water bodies. Congress should provide financial support for the scientific research needed to develop water quality standards adapted to waters in the arid West.

6. The Clean Water Act reauthorization should include a new statement of purpose to encourage the reuse of treated wastewater to reduce water pollution and efficiently manage water resources.
7. Nonpoint source (NPS) pollution:
 - a.) NPS pollution requires the development of watershed-oriented water quality management plans to reduce pollutant loadings to Western waters. Watersheds encompass a variety of land uses and activities, including those managed by Federal agencies, which can impair surface and ground waters. As part of these watersheds, federal agencies need to comply with the requirements of watershed management plans, developed under the vested responsibility of the States to control and reduce pollution, including that from nonpoint sources.
 - b.) The Clean Water Act does not stand alone in protecting America's waters from NPS pollution. Other ongoing programs at the federal, state and local levels must be funded fully and coordinated with, not superseded by, the Clean Water Act. In particular, the state-led programs, when coupled with various Farm Bill, Clean Water Act and Safe Drinking Water Act incentives and support, can provide significant and continuing opportunity for major environmental quality protection. Federal water policies must recognize that the state programs, if enhanced through Federal efforts, could provide a firm foundation for a sound national NPS policy. In particular, implementation of agriculture and forestry conservation programs in the Farm Bill should give priority to restoration of waters impaired by NPS pollution.
 - c.) The Governors believe that EPA's 319 Program is a valuable program that empowers states to meet the goals of the Clean Water Act. The Governors support continued funding for the 319 Program, as it complements – not duplicates – Farm Bill programs. Nonpoint source funding should enable states to balance program elements with state priorities identified in state nonpoint source management plans and Performance Partnership Agreements (PPAs), including: technology development, monitoring, assessment, demonstration projects, technical assistance for locally-led watershed efforts, and non-traditional water quality management programs.
8. The states are interested in continuing to use the NPDES general permit program in addressing a large number of similar sources of pollution which collectively are a significant source of pollutants to our nation's waters but as individual sources are relatively minor. This is particularly true for stormwater point sources. States and EPA have appropriately used general permits to address these types of sources. EPA's

administration of the Clean Water Act and/or reauthorization of the Clean Water Act must reconcile the continuing administrative need for general permits with the site-specific permitting requirements under the Act. EPA needs to promulgate rules/guidance that better supports the use of general permits where it is more effective to permit groups of dischargers than individual dischargers.

9. Western water management is highly dependent upon the availability of data and information regarding the quantity and quality of surface and ground waters. EPA has emphasized the importance of additional monitoring in its recent “Ten Elements” guidance to the States. Federal support of monitoring activities is crucial at all times, but especially now when State budgets face shortfalls. The Federal government, through EPA Section 106 funding and the U.S. Geological Survey Cooperative Program, needs to adequately finance and support the collection of water data in the nation’s streams, lakes and aquifers. Funding for monitoring activities, however, should not rely on a diversion from existing water quality programs, as has been done since 2005 with EPA’s Section 106 monitoring set-aside.
10. The states, tribes and the EPA face unique coordination challenges on water quality issues related to cross border flows between state and tribal lands. While retaining the ability of the Governors to take a leadership role in coordination with tribes, the Governors encourage the EPA to promote effective consultation, coordination, and dispute resolution among the governments, with emphasis on lands where tribes have EPA-approved standards. The Governors endorse government-to-government cooperation among the states, tribes and the EPA in support of effective, consistent Clean Water Act implementation.
11. The Governors support implementation of a comprehensive Animal Feeding Operation (AFO)/Concentrated Animal Feeding Operation (CAFO) strategy.
 - a.) All AFOs/CAFOs should develop manure management plans that are consistent with sound agronomic practices and water quality protection.
 - b.) Farm Bill funding for AFOs/CAFOs in the states should be targeted to environmental priority concerns, especially impaired waters.
 - c.) The number of permits that must be issued under the CAFO rule and the costs of implementing the CAFO rule are significant. Environmental results can be maximized by focusing on state-identified water quality priorities and coordinated federal, state, and local agency assistance to regulated activities. Both voluntary and regulatory mechanisms are valid approaches to solve water quality problems associated with CAFOs, as are state-led innovations, such as Environmental Management Systems (EMS).
12. Water supply management in the West requires elaborate systems for moving waters across natural drainage divides. In many cases, these systems transfer non-native waters into separate and distinct water bodies. Generally, adequate state authorities are in place

to protect the existing environment of these ecosystems from potential adverse impacts of such water transfers. Consistent with Section 101(g) of the Clean Water Act, the federal government should not intercede in state water allocations and management decisions. However, where such transfers result in water quality impacts, States should manage such impacts as they deem appropriate using any available legal authorities.

13. The Governors urge the EPA to work cooperatively with the states to develop and implement a TMDL program that provides flexibility to accommodate state and local conditions, addresses funding needs in a realistic manner, recognizes a watershed-based approach to establishing TMDLs, and encourages incentive-based approaches, such as pollution trading programs and voluntary compliance before applicable mandatory measures are taken. The Governors are committed to providing the leadership to ensure a strong state role in coordinating TMDLs for watersheds involving multiple states. States should develop the necessary models, processes and principles to assume a leadership role to resolve TMDL issues that transcend their boundaries.
14. Restoring Clean Water State Revolving Fund (CWSRF) funding is critical to our states. The Governors support continuing stable federal CWSRF appropriations at a level of \$1.35 billion per year, increased annually by a construction inflation index. If any grant or trust fund is established to help build and restore the nation's wastewater infrastructure, the program should be a state-managed companion to the CWSRF. Further, a new grant or trust fund should not be funded at the expense of the CWSRF.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Western Governors' Association (WGA) shall post this resolution to its Web site to be referred to and transmitted as necessary.
2. WGA shall monitor any relevant legislation and implementation of the current Act, and work with the appropriate public policy organizations in support of the Governors' policies.

This resolution revises 2005 Policy Resolution 05-10, originally adopted in 1995 as Policy Resolution 95-015 and readopted in 1998 as resolution 98-017 and 2004 as resolution 04-11.

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