



**WESTERN STATES WATER COUNCIL**

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July 11, 2008

Position No. 300

The Honorable Jon Tester  
United States Senate  
204 Russell Senate Office Building  
Washington, DC 20510-2604

**via fax: (202) 224-8594**

Dear Senator Tester:

We appreciate your efforts in introducing the Cooperative Watershed Management Act of 2008 (S. 3085) and look forward to working with you on this legislation. The Council has a long history of promoting local watershed planning, having published a 1998 State Watershed Strategy Guidebook. States have primary responsibility for managing their water resources, both quantity and quality, and the legislation should explicitly recognize and provide support for ongoing watershed efforts in the states and close consultation with the states in the implementation of any new federal program. States are in the best position to evaluate and prioritize their needs and the governor of a state should be consulted in the selection and prioritization of funding for watershed groups.

Our June 2006 report, "Water Needs and Strategies for a Sustainable Future," adopted by the Western Governors' Association included a number of references to watersheds, collaborative decisionmaking and related recommendations. Specifically, the report says, "States should facilitate collaborative watershed-focused planning that balances desirable growth and protection of the natural environment that depends on surface and ground water quantity and quality." Further, "The WSWC should encourage states to develop and implement strong state water plans.... The focus should be on a grassroots, watershed approach to identifying water problems and potential solutions from the ground up, integrating these efforts into individual state plans. Similarly, regional or multi-state and multiple river basin strategic plans should be comprised of these building blocks."

Also with respect to water resources planning the June 2006 Water Report said: "States should maintain various water-related plans, including state water plans, watershed plans, state drought plans, reservoir management plans, flood plans, etc. These plans should be expanded or enhanced accordingly to include climate change scenarios. Particular emphasis should be placed on climate change within the context of watershed planning."

CWMA could be an important tool for watershed groups and managers, consistent with our ongoing efforts and those of the governors. However, we would make the following suggestions for your consideration. The bill would benefit from a statement of purpose and need. Similarly, there needs to be some definition of the approximate size of a watershed, which in general would likely be a relatively small watershed, say the Bitterroot or Lemhi basin, as opposed to the Missouri or Columbia river basins.

Next, the term "management group" in Section 2(3)(A) needs to be better defined and "watershed group" may be better as that is a more generally accepted term. Further, "management entity" should be defined. Management may convey a presumptive and negative message to existing "water managers" at various levels. It should be emphasized that participation in a watershed group is voluntary, "grassroots,"

“cooperative,” and “nonregulatory.” “Management group” may appear to imply some sort of regulatory authority and function.

Similarly, the bill requires that a “watershed-wide management group” be “capable of managing in a sustainable manner the water resources of the watershed that is the subject of the management group...” under Section 2(3)(D). Most watershed groups are without regulatory authority and are primarily advisory groups that may not be “capable” of management of the watershed as envisioned, but still merit technical and financial assistance. For example, they obviously would not and should not be “capable” of administering and reallocating existing water rights protected under state law.

“Watershed groups” generally are thought of as a dynamic approach to bring to bear the various regulatory and non-regulatory authorities of their participants, as well as technical and financial resources, to identify and resolve specific problems within the watershed. They are not generally a means to address any and all problems. Perhaps an alternative phrase would be a “self-sustaining, cooperative watershed group” that is capable of “promoting the sustainable use of the water resources of the watershed...” under Section 2(D).

Our June 2008 Water Needs and Strategies “Next Steps” Report, adopted recently by the WGA, suggests that “States may wish to consider empowering local watershed groups with more authority.” However, at present, these groups have little if any authority other than planning. What authority such groups should have is a function of their needs and purposes, and should be determined by the group or state and local officials.

Also, we would respectfully suggest rewording Section 2(3)(A) to read: “...is comprised of each and every affected stakeholder of the watershed that is the subject of the watershed group that chooses to participate.” The point is that any entity threatening not to participate might otherwise hold the remainder “hostage,” or purposely derail the program by sitting out. Similarly, while it is important that a wide range of interests be represented, it is not possible to include every variation of each interest, and the bill would benefit from a few major criteria related to different interests’ credentials or organizational standing. This problem appears to be recognized in Section 3(b) ELIGIBILITY where public and private entities are to be included “...to the maximum extent practicable.” The requirement should apply to the “management group” seeking funding.

Under 3(b)(1), we would add something like “potable water purveyors and industrial water users” as not all municipal water providers are public entities, which we assume are intended to be included under 3(b)(3), and many mining and manufacturing entities are “self-supplied.” It may be best to include a category for private interests such as oil, gas and mining. There should be a separate category for any state representative that has authority or an interest in the watershed, and another category for any local authorities.

Moreover, in general, there should be some encouragement for using existing groups, as opposed to the formation of competing forums, while establishing new groups where none now exist. Similarly, competition for funding among similar programs would be a concern. There are a number of examples of existing groups such as the Blackfoot Challenge, Colorado’s basin roundtables, Idaho’s watershed advisory groups, the Santa Fe Watershed Association, etc.

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There should be a strong mandate for federal interagency cooperation. Under 3(b)(2) you might consider adding (D) the Environmental Protection Agency; and under (C) after NOAA Fisheries, add "...or the U.S. Fish and Wildlife Service." NOAA Fisheries and USFWS each have Endangered Species Act (ESA) responsibilities. The Environmental Protection Agency's Office of Water and Office of Wetlands, Oceans and Watersheds shouldn't be overlooked, nor USDA's Natural Resources Conservation Service (NRCS) and their resource assessments. While recognizing that there may be Committee jurisdiction issues, it is important to coordinate watershed planning and management at the federal level.

With respect to Sec. 3(c)(1)(B) and the program application process and eligibility criteria, it may be well to explicitly include as criteria "as recommended by the governor," or perhaps as "developed in consultation with the states." Ideally, local watershed plans and programs will be built with state collaboration and support, and should be consistent with state water and watershed plans and programs. Moreover, it is the States' role to reconcile "instate" disputes or conflicts between "intrastate" watershed groups over resources or proposed actions.

The greatest benefit from the bill may be increasing the resources available through the Department of Interior and its agencies (U.S. Bureau of Reclamation, U.S. Geological Survey and U.S. Fish and Wildlife Service) to participate and support local watershed groups. The phased approach to federal support taken in the bill is appropriate and the emphasis on results could be strengthened.

Appropriations will be a concern, and out year funding is likely to be inadequate if many of the groups move past Phase I. Ultimately, we would like to see fewer studies and more solutions, results and projects.

Again, we appreciate the opportunity to comment on the bill and look forward to working with you on it in the future.

Sincerely,



Garland Erbele, Chairman  
Western States Water Council