



WESTERN GOVERNORS' ASSOCIATION

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August 21, 2013

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, D.C. 20310-0108

Dear Assistant Secretary Darcy:

On behalf of the Western Governors' Association (WGA), I am writing to express interest and concerns related to the U.S. Army Corps of Engineer's pending rulemaking on the definition and treatment of surplus water in Corps reservoirs. It is critical that this important undertaking recognize the West's unique hydrology and legal doctrines, as well as Congress' longstanding deference to state law with respect to the allocation and use of water. Water belongs to the states, which have exclusive and Constitutional authority over its consumptive use and the allocation and adjudication of water rights.

WGA understands that the Administration is nearing completion of its review of a draft rule to address the policies by which it will determine prices for surplus water contracts. WGA is concerned that the Corps has not adequately engaged the states – which are responsible for the allocation and management of their water resources – in the development of this draft and that its release may be premature. Prior to publishing it in the *Federal Register* for public comment, WGA urges you to first initiate a substantive dialogue with the states.

I have attached a letter recently sent to you by the Western States Water Council (WSWC), an affiliate organization of WGA, detailing the concerns of Western states. As requested in the letter, WGA asks you to work with the states, WSWC and WGA to address these concerns. I also urge you to attend the upcoming WSWC meeting in Deadwood, South Dakota (October 2-4, 2013) in order to discuss this matter with the state water managers that comprise the Water Council.

Honorable Jo-Ellen Darcy

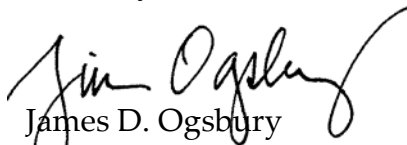
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Releasing a proposed rule without first engaging in serious consultations with the states may significantly compromise our ability to reach a mutually acceptable solution that recognizes and balances both the rights and interests of the states and the responsibilities of the Corps as authorized by Congress.

Thank you for your consideration of this request. I look forward to your positive response and an opportunity to pursue a serious dialogue regarding this critical issue.

Sincerely,



James D. Ogsbury
Executive Director

cc: Steven Stockton, Director of Civil Works, U.S. Army Corps of Engineers
Howard Shelanski, Administrator, Office of Information and Regulatory Affairs

Attachment