WESTERN GOVERNORS
WGA Winter Meeting

The Western Governors’ Association (WGA) winter meeting was held in Las Vegas, Nevada on December 13-14, under the leadership of WGA Chairman Doug Burgum Governor of North Dakota with a welcome from Nevada Governor Steve Sisolak. Others attending and participating included: Governors Kate Brown, Oregon (and WGA Vice Chair); Steve Bullock, Montana; Doug Ducey, Arizona; David Ige, Hawaii; Gary Herbert, Utah; Brad Little, Idaho; Kristi Noem, South Dakota; Jared Polis, Colorado; and Kevin Stitt. The governors discussed state-federal relationships and announced the launch of a Western Governors’ Center of Excellence for Improving the State Federal Relationship, an online repository that includes case studies, reports, correspondence and other research and policy work. They also updated their resolution on Strengthening the State-Federal Relationship (see westgov.org).

Four other resolutions adopted by the governors covered the States’ Share of Royalties and Leasing Revenues from Federal Lands and Minerals; Tax-Exempt Federal Lands and Secure Rural Schools; Financial Assurance Regulation; and Physical and Behavioral Health Care in Western States. The governors noted that the impacts of western mines and industrial facilities are primarily related to water and it is therefore appropriate and consistent with Congressional intent to recognize the states’ primary role in regulating water-related impacts of mine reclamation, including associated financial assurance requirements. Western Governors believe that states have financial assurance regulatory programs in place that are working well and that those programs should not be preempted or duplicated by any federal program.

The governors also addressed the challenges of reinvigorating rural communities, science education, energy innovations, precision agriculture, students in recovery from substance abuse, cybersecurity, and the epidemic of missing and murdered indigenous women.

Governor Burgum’s Reimagining the Rural West Initiative is all about “unique things happening demographically and technologically and take advantage in order to create opportunity.” Land O’Lakes CEO Beth Ford provided a keynote address about how the national cooperative is central to the vibrancy of the communities in which they do business. She noted the hardships agricultural producers and families face. “It is heartbreaking to go to those farmers who work so hard but make so little, but they’re not concerned about themselves, they are concerned about the kid down the road not getting enough food. They deserve our attention.”

Inventor Dean Kamen talked about how to best educate the workforce of the future, and how to inspire young people to enter STEM fields that sponsor robotics competitions. “The industry was concerned 30 years ago about not having enough tech people. They said it was an education problem. We don’t have an education problem; we have a culture problem. Technology and media have created superstars in entertainment and sports…. Be part of the culture that makes science and technology and engineering seem exciting and accessible to kids. Put it in the format that makes them want to participate…. We don’t use kids to build robots, we use robots to build kids.”

A panel addressed how farmers and ranchers are using various technologies to innovate their operations and adopt policies that can support the growth of advanced precision agriculture across the West. Jim Ethington, CEO, Arable asked: “How do we better manage our natural resources in the face of many challenges? Our mission is to use science and data to improve productivity and sustainability of agriculture. Starts with an integrated system.” Raj Khosla, Professor, Colorado State University added: “Today we have more GPS users on the planet than cell phone users. GPS totally revolutionized how we practice agriculture today…. There is significant spatial and temporal variability in the field. Precision agriculture tries to manage that spatial and temporal variability.” Lastly, John Jansen, Vice President of North America, The Climate Corporation, declared: “Our belief is that the next big breakthroughs in ag are going to come from data and analysis and helping inform better decisions. Data science helps farmers and agronomists make better decisions about the seeds they plant, how they manage their crop, and reduce risk in their operation.”
The WGA 2020 Annual Meeting will be held on June 29-July 2, in Medora, North Dakota adjacent to Theodore Roosevelt National Park.

CONGRESS

PFAS/DOD Water Consumption

On December 17, the Senate passed the National Defense Authorization Act (NDAA) (S. 1790). The House passed the conferenced version of the bill on December 11. The bill directs DOD facilities to reduce landscaping, industrial and agricultural water consumption by 2% per year through 2030, using a consumption baseline from 2010. It also directs conservation through the installation of meters to collect data and building infrastructure to manage stormwater and wastewater.

The NDAA directs the Department of Defense (DOD) on required methods of PFAS disposal. It authorizes and directs DOD to enter into agreements with local communities to share monitoring information for PFAS and other emerging contaminants of concern, as well as maintaining a public website for members of the military, their families, and surrounding communities with information on contaminants and treatment.

At the request of any governor, DOD is directed to work with that state to finalize or amend any cooperative agreements to address testing, monitoring, removal, and remedial actions relating to contamination of drinking surface, or groundwater from PFAS originating from DOD activities. The efforts must meet or exceed either the enforceable state or federal standards under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), whichever is more stringent. DOD may also enter into agreements with state, local, or tribal water authorities, such as public water systems and publicly owned treatment works.

The bill directs the Environmental Protection Agency (EPA) to require public water systems serving more than 10,000 people to monitor for PFAS and other substances. It amends the Drinking Water State Revolving Funds statute (42 USC 300j-12) to emphasize PFAS. It includes PFAS and related chemicals to be reported in the Toxics Release Inventory (42 USC 11023(c)). It directs EPA to establish a working group to analyze the public health effects of these contaminants, including identifying ways to work with states to address contaminants and communication with the public.

The NDAA directs the U.S. Geological Survey (USGS) to establish a performance standard for the detection of PFAS that is as sensitive as is feasible and practicable. The USGS is then directed to carry out a nationwide sampling process and report back to Congress.

LITIGATION

Florida v. Georgia

On December 11, the Special Master issued his recommendations to the U.S. Supreme Court in Florida v. Georgia. The previous recommendation was remanded by the Supreme Court for applying too strict of a redressability standard. The Court instructed the Special Master to make findings on: “(1) whether Florida suffered harm caused by decreased water flow into the Apalachicola River; (2) whether Florida showed that Georgia’s use of the Flint River is inequitable; (3) whether that potentially inequitable use harmed Florida; (4) whether an equity based cap on Georgia’s use of Flint River waters would materially increase streamflow in the Apalachicola River given the Corps’ operational rules or reasonable modifications that could be made to those rules; and (5) whether such additional streamflow in the Apalachicola River may significantly redress the economic and ecological harm that Florida has suffered. The Court also made clear that Florida must show that the benefits of the apportionment substantially outweigh the harm that might result.”

The Special Master found other causes for Florida's injuries than Georgia’s consumption of water, including drought, mismanagement of aquatic resources, and changes in stream-estuary morphology due to Corps operations. The Special Master wrote: “Given my factual findings, I recommend denying Florida’s request for a decree because it has not proved the elements necessary to obtain relief. Florida has pointed to harm in the oyster fishery collapse, but I do not find that Georgia caused that harm by clear and convincing evidence. Next, although Georgia’s use of the Flint and Chattahoochee Rivers has increased since the 1970s, Georgia’s use is not unreasonable or inequitable. Last, I have determined that the benefits of an apportionment would not substantially outweigh the harm that might result. This is especially true given that the Army Corps’ reservoir operations on the Chattahoochee River would prevent most streamflow increases from reaching Florida during the times when more streamflow is needed to alleviate Florida’s alleged harms.”

PEOPLE

Utah Natural Resources Executive Director Brian Steed has appointed Todd Adams as the new Director, Division of Water Resources. Adams has been serving as the division’s deputy director since 2013. Adams replaces former WSWC member and Division Director, Eric Millis, who retired on December 16.

Kent Jones has also retired as Utah State Engineer in the Division of Water Rights and Boyd Clayton has been named as his replacement.