STATE CONSULTATION

Working to Make the Process Better

Tuesday, Nov. 14 | 2 p.m. EST/11 a.m. PST | Free CSG Webinar Presented by CSG West
We the People

insure domestic Tranquility provide for the common
and our Posterity, to ordain and establish the

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, which shall have at least a population of free Persons. No Person shall be a Representative who shall not have attained the Age of twenty five Years, and who shall not have been a Representative or Senator of that State in which he shall be chosen. No Person shall be a Representative who shall not have been an inhabitant of that State in which he shall be chosen. No Person shall be a Senator who shall not have been a Representative or Senator of that State in which he shall be chosen. No Person shall be a Senator who shall not have been an inhabitant of that State in which he shall be chosen. No Person shall be a Senator who shall not have been an inhabitant of that State in which he shall be chosen.

The Congress shall consist of a Senate and House of Representatives. The Senate shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years, and shall be divided into three Classes. . . . The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, which shall have at least a population of free Persons. The right of the House of Representatives to determine the殷始 of that State in which he shall be chosen. No Person shall be a Representative who shall not have been an inhabitant of that State in which he shall be chosen. No Person shall be a Senator who shall not have been a Representative or Senator of that State in which he shall be chosen. No Person shall be a Senator who shall not have been an inhabitant of that State in which he shall be chosen. No Person shall be a Senator who shall not have been an inhabitant of that State in which he shall be chosen.

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Western Governors’ Association
Policy Resolution 2017-01

Building a Stronger State-Federal Relationship

A. PREAMBLE

The Governors of the West are proud of their unique role in governing and serving the citizens of this great nation. They recognize that the position they occupy -- the chief elected official of a sovereign state -- imposes upon them enormous responsibility and confers upon them tremendous opportunity. Moreover, the faithful discharge of their obligations is central to the success of the Great American Experiment.

It was, after all, the states that confederated to form a more perfect union by creating a national government of limited and defined powers. The grant of specific responsibilities for irreducible common interests -- such as national defense and interstate commerce -- was brilliantly designed to make the whole stronger than the sum of its parts.

The genius of American democracy is predicated on the separation of powers among branches of government (viz. the legislative, executive and judiciary) and the division of power between the federal and state governments (federalism). Under the American version of federalism, the powers of the federal government are narrow, enumerated and defined. The powers of the states, on the other hand, are vast and indefinite. States are responsible for executing all powers of governance not specifically bestowed to the federal government by the U.S. Constitution. This principle is memorialized in the Tenth Amendment, which states in its entirety, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This reservation of power to the states respects the differences between regions and peoples. It recognizes a right to self-determination at a local level. It rejects the notion that one size fits all, and it provides for a rich tapestry of local cultures, economics and environments.
States are NOT stakeholders
## Different Flavors

### Federal-State Relationship – Authority Framework

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Authority</th>
<th>Explanation</th>
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</thead>
<tbody>
<tr>
<td><strong>Scenario I</strong></td>
<td>Federal Authority Exclusively</td>
<td>There are powers that are specifically enumerated by the U.S. Constitution as exclusively the purview of the federal government.</td>
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<tr>
<td><strong>Scenario II</strong></td>
<td>State Primacy Rules</td>
<td>All powers not specifically delegated to the federal government by the U.S. Constitution are reserved for the states, allowing state legal authority to overrule federal intrusion.</td>
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<tr>
<td><strong>Scenario III</strong></td>
<td>Shared State-Federal Authority</td>
<td>Where state and/or federal authority can apply, given a particular fact pattern. Risk of federal preemption of state law is a concern with this scenario.</td>
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<tr>
<td><strong>Scenario IV</strong></td>
<td>State Authority “Delegated” from Federal Agencies via Federal Statute</td>
<td>Where a statutory regime contemplates establishment of federal standards, with delegated authority (permissive) available to states that wish to implement those standards.</td>
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# Agency by Agency Reforms

## Realigning the State-Federal Relationship

*Agency-by-Agency Menu of Possible Reforms*

This document contains a variety of process improvement recommendations informed by Western Governors’ policy resolutions and previous interactions with the Administration and Congress. The Governors’ primary priorities for regulatory reform are articulated in [WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship](https://example.com).

The document begins with a presentation of cross-cutting recommendations (those impacting more than one agency), followed by agency-specific recommendations. It was developed to as a practical tool for the Executive Branch and Congress as they consider regulatory process improvements.

<table>
<thead>
<tr>
<th>Entity</th>
<th>Description of Reform</th>
<th>Nexus to Governors’ Policy Resolutions</th>
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<tr>
<td>CROSS-CUTTING</td>
<td>Establish a federalism office in the executive branch - potential models include the U.S. Advisory Commission on Intergovernmental Relations (ACIR) and Council on Environmental Quality (CEQ).</td>
<td><a href="https://example.com">WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</a></td>
</tr>
<tr>
<td>Congress</td>
<td></td>
<td></td>
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</tbody>
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[| westgov.org | #WGA17 |}
WGA Definition of Consultation

Each Executive department and agency should be required to have a clear and accountable process to provide each state – through its Governor – with early, meaningful and substantive Western Governors’ Association input in the development of regulatory policies that have federalism implications. This includes the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budgets and strategic planning.
Learn More

State-Federal Relationship
The Feds
The Counties
And You!

Pete Obermueller, Executive Director
Wyoming County Commissioners Association
State (and local) Consultation

Federal Land Distribution in the United States

Federal land as a percentage of total land area
County Advocacy Benefits State Legislatures

– PILT, $464.6 million nationwide in FY17
  • $28.6 million in WY
  • $39.5 million in UT
  • $36.6 million in CO
  • $48.2 million in CA

– Secure Rural Schools, $278 million nationwide

– Federal Revenue Sharing (Wind generation)
Coordination is Statutory

- Federal Land Management and Policy Act (FLPMA)
- National Forest Management Act (NFMA)
Coordination and Cooperation

FLPMA

- Clear and unambiguous requirement that the Bureau of Land Management (BLM) must coordinate with States AND Local Government.

- Coordination is more than just consideration. The BLM must adhere to the "terms, conditions, and decisions" of local land use plans as long as they do not violate federal law.

43 USC 35, II, Sec. 1712
NFMA

- Still a mandate to coordinate with States AND Local Government, but the process is not as clearly defined as FLPMA. Moreover, the USFS explicitly denies that it must follow FLPMA’s coordination mandate.

- Coordination goes beyond simply "trying" to work together, but rather "negotiating...to work together effectively."

16 USC 36, I, Sec. 1604
Coordination and Cooperation

If Coordination were a trump card....

...we would have played it long ago
Coordination and Cooperation

Coordination is more like a Jack... 
...good, but not great.

Coordination:

- Does not overrule federal regulations, statutes, and most especially, the United States Constitution
- Does not require that the BLM or USFS adopt any particular local plan or policy
- Is an ongoing process with responsibilities on both sides

Does not require that your local governments adopt any special land use plans or natural resource policy plans.
Coordination and Cooperation

Cooperation is defined by regulation...

...not by Sesame Street

- Council of Environmental Quality (CEQ) allows for political subdivision participation in specific, NEPA related activities.

- States and Local Governments are recognized as having specific expertise. For example, socio-economics.

- State and local Governments are granted pre-decisional access not available to the public.

"Let’s call it...Shirley"
Coordination and Cooperation

The Role of the State Legislator

Beyond the Terse Letter

- Legislatures are a Hydra, and federal agencies will avoid at all costs.
- Empower and encourage your local officials to be the front lines
- Use your individual and collective authority
Coordination and Cooperation

The Role of the State Legislator
Examples from Wyoming

- The Federal Natural Resource Policy Account (FNRPA)
  - Legislatively Appropriated
  - Administered by the Governor
  - Used extensively by counties

- Socio-Economic Profiles
- Build internal capacity and fend off snake-oil salesmen
- Litigate when necessary
Questions?

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