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Andrus Letter - Western Governors and Forest Summit February 2, 1993

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OFFICE OF THE GOVERNOR

STATE CAPITOL

BOISE 83720-1000

CECIL D. ANDRUS
GOVERNOR

(208) 334-2100

February 10, 1993

M E M O R A N D U M

TO: Kathleen McGinty FAX: (202) 456-6231
FROM: Jon Carter 
RE: Western Governors' Association (WGA) Initiatives,
National Governors' Association (NGA) Initiatives and
Forest Summit

I am sure you are being inundated with information and requests on environmental issues, so I will be very brief.

1. WGA Initiative (DOIT Committee)--I talked with Jim Souby and he indicated that he has sent you a letter with additional information describing the project and asking for the White House's support.
2. NGA Initiative (Federal Facility Compliance)--You will be hearing shortly from Tom Curtis, staff to the National Governors' Association's Natural Resources Committee, about the governors' interest in working with the administration on environmental initiatives. My boss is lead governor on federal facilities for the NGA and is initiating a project to ensure appropriate implementation of the Federal Facility Compliance Act which passed last year. In this regard, I am enclosing copies of a letter from the NGA to the Department of Energy and a resolution on this subject which was adopted at the recent NGA meeting.
3. Forest Summit--As one who has worked in the timber industry as a logger and sawmill operator in North Idaho and who has served as Secretary of Interior and Governor of the state of Idaho, Governor Andrus has a fully informed perspective on timber issues in the Northwest. He understands not only timber supply issues, but associated issues such as endangered species. (In this regard, I am attaching a copy of a WGA resolution co-sponsored by Governors Andrus and Stephens on the Endangered Species Act which was adopted late last year.) Governor Andrus is in a unique position to assist in the Forest Summit and help bring resolution to the



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Katie

*Scheduling
Please notify
the Governor
is this ok
fine.*

The Honorable Al Gore
Vice President
The White House
Washington, D. C.

Dear Mr. Vice President:

It was great to see you at the White House last week when we visited. I truly believe you are going to accomplish many of the things that you and President Clinton set out to achieve, but don't for one minute think it will be easy. The Governors' Association is in an ideal posture to help, so don't hesitate to call on us.

Rumors in this part of the world are that a Northwest Timber Summit will be called and that you will head it up. If this rumor is true--and I hope it is--don't forget to include Idaho as a northwest timber state. Oregon and Washington have a tendency to pretend that we do not exist in resource matters; yet every time things get tight in either of those states, their resource users move east across the state line and start consuming Idaho resources. I would appreciate your help in seeing that we are included and not excluded.

With best regards,

Sincerely,

Cecil D. Andrus
Governor

CDA:cw

*Many thanks for your help
at Interior.*

Kathleen McGinty
February 10, 1993
Page Two

issue. Although some would say this is only a "west of the Cascades" issue, we believe that major decisions affecting timber supply west of the Cascades will have a ripple effect and impact on timber issues in the entire Northwest and northern California.

I would like to discuss these issues more fully with you when you have an opportunity. Essentially, I am inviting you to work with us on these and any other issues on which you believe our office can provide assistance to the Clinton administration. We look forward to working with you.

Good luck with the Office of Environmental Policy!

JC:db
attachments

December 30, 1992

Admiral James Watkins
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Admiral Watkins:

On behalf of the National Governors' Association, we are officially submitting these comments regarding the proposed Strategy for Development of a National Compliance Plan for DOE Mixed Waste. While DOE will no doubt also receive comments from individual Governors, these comments were developed collectively by the representatives of ten states who met with your staff recently in Denver. These states host many of the largest facilities in the DOE weapons complex, and have a significant interest in the issue of DOE mixed waste.

First, we would like to thank DOE for sponsoring the meeting in Denver to discuss its proposed strategy with the states. As DOE has recognized, the Federal Facilities Compliance Act of 1992 has given the states enforcement and plan-approval authority to ensure sound management of DOE mixed wastes. This act provides in part that states with authority under state law to regulate land disposal restricted wastes and authority under state law and authorization from USEPA to regulate the hazardous waste component of mixed wastes, shall approve, approve with modifications, or reject a site-specific mixed waste management plan to be submitted by the Department of Energy. By our analysis, 16 of the 17 states in which DOE stores or generates mixed waste have this authority and are in the position to receive and act upon the site-specific DOE plans.

As you are also aware, the Act's waiver of sovereign immunity for fines and penalties for violations of RCRA section 3004(j) involving DOE mixed wastes, is not effective for three years after the date of enactment. After this three year period, DOE will be subject to fines and penalties for violations of RCRA section 3004(j) involving all mixed waste not covered by an approved plan. We have no doubt that states will be prepared to impose such fines and penalties against DOE, beginning in October, 1995.

Given the large task of developing site-specific plans for each of the sites at which DOE stores or generates mixed waste and the relatively short period before states can impose fines and penalties

Admiral James Watkins

Page 2

December 30, 1992

on DOE for RCRA violations involving mixed waste, we believe it is critical that the Department begin immediately to develop site-specific plans. The Department has no obligation to develop or submit a national plan for mixed waste. While we recognize that the Department may wish to develop a national management strategy for its own purposes, we must emphasize that such a strategy will have no binding effect upon state regulators and will not under any circumstances constitute an acceptable submission to states under the terms of the Federal Facilities Compliance Act.

Rather than the "top down" approach to the development of site-specific plans envisioned in the DOE proposal, we urge you to adopt a "bottom up" approach, by developing site-specific plans first or simultaneously with any national management strategy. Overarching national needs, such as waste and technology inventories, waste minimization techniques, waste characterization, and technology development and transfer, could be assessed through national reports. These would be helpful to the states as well as to DOE, as site-specific plans are developed.

We appreciate and accept your offer of financial support for the states in the work we must do before we can take final action on the site-specific plans you submit to us. Individual states need financial assistance to be able to work with the Department in the development and review of such plans, and the states collectively need to share information and discuss common concerns, including interstate equity issues. In Denver, the states representatives agreed that the National Governors' Association provides the best forum for such discussions among the states and between the states collectively and DOE. Because the authority to review and approve site-specific plans is vested in Governors under the law, we believe that the NGA r group has the membership and scope most appropriate to the task at hand. Our representatives will be in touch with you shortly to discuss a specific proposal to facilitate collective discussions among the states and with DOE. We pledge to work closely with other interested groups, including regional Governors' associations, attorneys general, and others, as our work on this issue unfolds.

We are very interested in moving quickly on this project, and suggest another meeting soon between states and DOE to discuss the waste and technology inventories; what will constitute an acceptable site-specific plan; on-site versus off-site waste treatment, storage, and disposal; and other issues. We believe the scope of these discussions must include states with commercial treatment or disposal capacity upon which the DOE may depend, as well as states in which mixed waste is now stored or generated.

Admiral James Watkins

Page 3

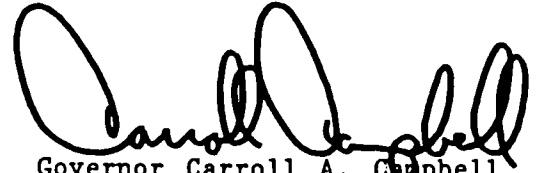
December 30, 1992

We will appreciate your timely response to these comments, and look forward to working with you as the Department addresses the problem of mixed wastes at each of its sites across the nation.

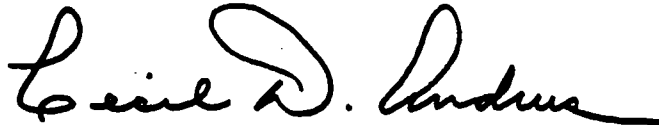
Sincerely,



Governor Roy Romer
Chairman
National Governors' Association



Governor Carroll A. Campbell
Vice Chairman
National Governors' Association



Governor Cecil D. Andrus
Lead Governor on Federal Facilities

cc: Leo Duffy
Jean Schumann

RESOLUTION*

IMPLEMENTATION OF THE FEDERAL FACILITIES COMPLIANCE ACT

THE GOVERNORS APPLAUD PRESIDENT BUSH AND CONGRESS FOR THEIR CONSTRUCTIVE WORK IN THE DEVELOPMENT OF THE FEDERAL FACILITIES COMPLIANCE ACT OF 1992. WITH LIMITED EXCEPTIONS, THIS HISTORIC LEGISLATION ENSURES THAT THE FEDERAL GOVERNMENT IS HELD TO THE SAME STANDARDS FOR HAZARDOUS WASTE MANAGEMENT THAT APPLY TO ALL OTHER PARTIES. FURTHER, IT ALLOWS STATES AND THE ENVIRONMENTAL PROTECTION AGENCY TO UTILIZE THE FULL RANGE OF ENFORCEMENT AUTHORITIES NORMALLY AVAILABLE UNDER THE LAW IN THE EVENT OF FEDERAL NONCOMPLIANCE.

IN THE CASE OF RADIOACTIVE MIXED WASTES GENERATED OR STORED BY THE DEPARTMENT OF ENERGY (DOE), THE LAW ALLOWS DOE THREE YEARS TO DEVELOP SITE-SPECIFIC MIXED WASTE COMPLIANCE PLANS BEFORE THOSE PLANS MUST BE SUBMITTED TO THE GOVERNOR OF THE CONCERNED STATE FOR APPROVAL, MODIFICATION, OR DISAPPROVAL. THE GOVERNORS URGE DOE TO IMMEDIATELY BEGIN THE DEVELOPMENT OF THESE SITE-SPECIFIC PLANS. A NUMBER OF OVERARCHING NATIONAL ISSUES SUCH AS TECHNOLOGY DEVELOPMENT AND TRANSFER SHOULD BE ADDRESSED THROUGH NATIONAL REPORTS.

AS THESE SITE-SPECIFIC PLANS AND NATIONAL REPORTS ARE DEVELOPED, THERE IS A CRITICAL NEED FOR CLOSE CONSULTATION AMONG THE STATES AND BETWEEN THE STATES AND DOE. ONLY SUCH CONSULTATION AMONG THE STATES AND CLOSE DIALOGUE BETWEEN THE STATES AND DOE CAN ENSURE THE INTEGRITY OF THE PLANNING PROCESS AND AN ACCEPTABLE OUTCOME. THE GOVERNORS BELIEVE THAT THE NATIONAL GOVERNORS' ASSOCIATION (NGA) PROVIDES THE BEST FORUM FOR DEVELOPING AND CONDUCTING THIS DIALOGUE, AND URGE DOE TO ENTER INTO A WORKING PARTNERSHIP WITH NGA TO ASSIST IN SUCH DISCUSSIONS. INDIVIDUAL STATES ALSO MAY REQUIRE ASSISTANCE FOR THEIR REVIEW OF SITE-SPECIFIC PLANS, AND THE GOVERNORS

URGE CONGRESS TO APPROPRIATE AND DOE TO MAKE AVAILABLE ALL NECESSARY ASSISTANCE TO INDIVIDUAL STATES.

*** Based on the policy, "Environmental Compliance at Federal Facilities."**

RESOLUTION ON THE IMPLEMENTATION OF THE FEDERAL FACILITIES COMPLIANCE ACT

BACKGROUND PAPER

Background

On October 6th President Bush signed the Federal Facilities Compliance Act of 1992. This legislation waives federal sovereign immunity for violations of the Resource Conservation and Recovery Act (RCRA), so that the federal government -- which generates, stores, and disposes substantial quantities of hazardous wastes -- is subject to fines and penalties for violations of RCRA to the same extent as private parties. For mixed (radioactive and hazardous) wastes generated or stored by the Department of Energy, the authority for fines and penalties is withheld for three years, during which DOE is directed to develop site-specific plans for mixed waste compliance. The Act protects certain mixed waste agreements already in effect between a state and DOE. For other states, after three years, DOE becomes susceptible to fines and penalties for RCRA violations involving any mixed wastes unless the state has approved a mixed waste compliance plan covering those wastes. This serves as a strong incentive for the DOE to develop compliance plans within three years for each site on which it generates or stores mixed wastes.

Because DOE stores various quantities and types of mixed wastes at different sites in 17 states (see attached list), it is highly probable that it will propose to develop regional or national treatment and disposal capacity for some mixed waste types. In other words, DOE is likely to propose interstate transfers of mixed wastes for treatment and/or disposal. Though Governors are empowered to approve, modify, or reject the site-specific mixed waste plans developed by DOE for sites in their states, the Governors are required to consider the need for regional or national capacity in reviewing those plans. Thus, a tension is created at the outset in which DOE's interest in minimizing the number of treatment and disposal facilities is pitted against a Governor's reluctance to approve a plan involving the importation of potentially large quantities of mixed waste for treatment or disposal in his state.

Nature of Proposal

The proposed resolution urges DOE to immediately begin the development of site-specific plans for mixed waste compliance. It also suggests that a dialogue among the states and between the states and DOE is essential to ensure the integrity of this planning process and to ensure an outcome acceptable to the states. It recommends the National Governors' Association as the most appropriate forum for developing this dialogue. Finally, it asks DOE to support the NGA dialogue and to support individual states in the review of site-specific plans.

Fiscal Impact

The fiscal impact on states will be positive, depending on the amount of assistance DOE provides individual states in the review of site-specific mixed waste compliance plans. The total federal cost is unknown.

DOE SITES THAT MANAGE MIXED WASTE

<u>STATE</u>	<u>FO</u>	<u>DOE SITE NAME</u>
IA	CH	Ames Laboratory (sm. generator)
IL	CH	Argonne National Laboratory - East
ID	ID	Argonne National Laboratory - West
PA	NR	Bettis Atomic Power Laboratory (sm. generator)
OH	CH	Battelle Columbus Laboratory (NW no longer generated)
NY	CH	Brookhaven National Laboratory
NY	FUSRAP	Colonie Interim Storage Site (NW no longer generated)
CA	SF	Energy Technology Engineering Center (Santa Susanna)
OH	OR	Fernald Environmental Management Project
IL	CH	Fermie National Accelerator Laboratory
CO	AL/UMTRA	Grand Junction Project Office (sm. generator)
WA	RL	Hanford
ID	ID	Idaho National Engineering Laboratory
NM	AL	Inhalation Toxicology Research Institute
NY	NR	Knolls Atomic Power Laboratory - Knolls (sm. generator)
MO	AL	Kansas City Plant
NY	NR	Knolls Atomic Power Laboratory - Kesselring (sm. generator)
NM	AL	Los Alamos National Laboratory
CA	SF	Lawrence Berkeley Laboratory
CA	SF	Laboratory for Energy-Related Health Research (NW no longer generated)
CA	SF	Lawrence Livermore National Laboratory
OH	AL	Mound Plant
ID	NR	Naval Reactors Facility (NW no longer generated, but may be)
NV	NV	Nevada Test Site
TN	OR	Oak Ridge Gaseous Diffusion Plant
TN	OR	Oak Ridge National Laboratory
KY	OR	Paducah Gaseous Diffusion Plant
FL	AL	Pinellas Plant**
OH	OR	Portsmouth Gaseous Diffusion Plant
NJ	CH	Princeton Plasma Physics Laboratory
TX	AL	Pantex Plant
CO	RF	Rocky Flats Plant
NM	AL	Sandia National Laboratory - Albuquerque
CA	AL	Sandia National Laboratory - Livermore
SC	SR	Savannah River Site
CA	SF	Stanford Linear Accelerator Center*
MO	AL/UMTRA	Weldon Springs Remedial Action Site
NY	ID	West Valley Demonstration Project
TN	OR	Y-12 Plant
CT	NR	Knolls Atomic Power Laboratory - Windsor*

- * Does not currently generate or store mixed waste, but may generate some in the near future.
- ** Does not currently generate or store mixed waste, but may generate some in the next 5 years. [Note: Letter not sent to Florida Governor.]

SPONSOR: Governors Andrus and Stephens
SUBJECT: Reauthorization of the Endangered Species Act

A. BACKGROUND

1. The West highly values its natural environment. The variety of animal and plant life is a vital part of the western experience and nurtures all who live or visit here.
2. Westerners support protecting threatened and endangered species. To this end, the Endangered Species Act (ESA) raises the profile of imperiled and rare species, draws attention to the dangers of altering or destroying their habitat, and prescribes measures to protect and help those species recover.
3. Western states are significantly affected by the federal listing of endangered species. Most experiences under the Act, both good and bad, have occurred in the western United States.
4. Generally, the Act works well. Development and species recovery can co-exist. However, there is ample evidence that the federal government is not getting the job done under the ESA. Limited resources have not been used in the most effective manner; the focus has been on single species, especially high-profile species, as opposed to maintaining a variety of species in suitable habitat; and negotiated solutions for those affected have been difficult to come by.
5. Insufficient funding of federal agencies (United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)) and the states has prevented effective implementation of the Act. The ESA's provisions for a cooperative approach between states and the federal government have been severely weakened by inadequate and inconsistent funding. For example, the total amount of funding provided to support state programs in the entire two-decade history of the law is less than half the amount of federal excise tax dollars that will be spent this year alone in support of state game and sport fish programs. This enormous disparity exists despite the fact that there are hundreds of endangered species compared to only a few dozen game species.
6. The ESA lacks any provisions that states be afforded notice and a meaningful

opportunity to comment and participate before the federal government makes any number of decisions -- ranging from listing through de-listing - under the ESA. Such consultation is largely optional under the current scheme, and has been erratically provided. The states' role also has been limited by rigid internal federal decision-making processes, the lack of open sharing of scientific information combined with ignoring of state-based information, and a lack of delegation to states to accomplish recoveries of listed species.

B. GOVERNORS' POLICY STATEMENT

1. Congress should reauthorize the ESA. The only amendments needed are those that make the Act more understandable and workable, as follows.
2. The roles, responsibilities and incentives provided the states and other stakeholders in the recovery of threatened and endangered species must be significantly enhanced. States possess broad trustee and police powers over fish and wildlife within their borders, including those found on federal lands within their borders. With the exception of marine mammals, states retain concurrent jurisdiction even where Congress has limited state authority as in the case of endangered species. The Act and its implementation must clarify this federal-state partnership. The Act should be clarified to require state and stakeholder notification and comment prior to any agency decision under the Act. Consultation with governors of affected states must occur prior to rulemaking to coordinate state findings and programs with federal actions and to minimize adverse impacts. Congress should ensure that states are partners in establishing and implementing recovery plans, developing habitat evaluations, and monitoring and managing species while listed. Obstacles to meaningful state participation, such as those created by the Federal Advisory Committee Act, should be eliminated.
3. Listing of threatened and endangered species should continue to be based, as it presently is, solely on the best scientific data available. The list is intended to reflect an honest and objective assessment of the status of imperiled and rare species. Congress should affirm that the question of whether a species is threatened or endangered is a scientific decision.
4. The ESA should be amended to address the backlog of species that are candidates for listing. Adequate data already exists to start the process for over 600 "category one" candidates and thereby afford them the basic protections of the Act. However, the process will take nearly twelve years at the current rate of about 50 decisions per year. Beyond the near horizon, nearly 3,000 "category two" candidate species await studies and possible decisions to list. Deadlines should be mandated for the U.S. Fish and

Wildlife Service and the National Marine Fisheries Service to complete the listing process for species in both categories, with a more onerous deadline for those species in category one. To provide needed flexibility in meeting the deadlines, the Act should authorize the agencies to list species, where appropriate, in clusters or related groups.

5. Designation of critical habitat and the development of recovery plans should occur concurrently, and they should be accomplished within a specified period of time after a species has been listed. It is incongruous with the Act's purposes to allow a species to be listed without any assurances that habitat critical for its survival will soon be protected or that a plan for its recovery will soon be adopted.
6. The Act should authorize designation of critical habitat and the development of recovery plans for clusters or related groups of species. Proactive habitat planning should be encouraged at both the state and federal levels for entire ecosystems rather than relying on the single species approach. In addition, to ensure that monies are well-spent, the Act should be amended to require priority in designating critical habitat and developing recovery plans to those actions that offer the best likelihood of biological recovery of species in the most time-efficient manner.
7. The ESA distinguishes between "endangered" and "threatened" species, with the former being subject to more protective regimes than the latter. However, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service apply their rules for protecting endangered species to threatened species as well, regardless of whether those additional protections are warranted. Congress should direct the agencies to respect the distinctions between endangered and threatened species set forth in the Act. Further, the Act should be clarified to provide for greater flexibility in managing threatened species. Species awaiting listing should be included for assistance under law so that they qualify for funding and some protections before they reach critical stages.
8. "Regulated" takings by governmental agencies are appropriately limited to extraordinary cases. However, the Act's definition of an extraordinary case is too rigid and should be modified to afford greater flexibility to agencies in deciding when regulated takings are appropriate.
9. De-listing, once conceived as an equal goal in the ESA process, has proceeded at a glacial pace even though some currently listed species are biologically recovered. The Act should mandate that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service specify in recovery plans objectives and quantifiable criteria (e.g., size of population, amount of suitable habitat,

and the like) that, if met, would require the agencies to initiate the de-listing process.

De-listing is an important part of the ESA process; it frees resources that can be used for other species that are threatened or endangered.

10. Presently, economics are considered in designating critical habitat and adopting recovery plans under the Act. Significant economic impacts resulting from the national priority of species survival should be mitigated through federally-funded measures designed to assist affected localities, private property owners, and businesses and their employees.
11. Congress must appropriate substantially more funding to adequately implement the Act. It must financially support the federal agencies charged with implementing the Act, and states, local governments and private concerns dealing with the recovery of threatened and endangered species. Congress should establish a dedicated funding source to support programs under the Act. Potential sources of funding for such a dedicated account could include some combination of user fees, developer fees, land-transfer fees, and tax return check-offs. Federal funds should be used to leverage funding from other sources. In addition to increased funding, Congress should provide incentives to public and private landowners to improve habitat for recovering species. Such incentives could be provided by way of tax credits and market-based incentives.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. This resolution is to be transmitted to the President, governors of all the states, Secretary of the Interior, Assistant Secretary for and Director of the U.S. Fish and Wildlife Service and its regional directors, Assistant Secretary for and Director of the National Marine Fisheries Service and its regional directors, members of the Senate Committee on the Environment and Public Works, members of the House Interior Committee, members of the House Merchant Marine and Fisheries Committee, other federal and all state fish, wildlife, land and water management agencies, and public interest and stakeholder groups.