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May 14, 2013

Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250

Dear Secretary Vilsack:

On behalf of Western Governors, we are writing to express deep concern regarding your agencies' implementation of the Budget Control Act of 2011 (the so-called "budget sequester"), with relation to important resources that have already been provided to our states. In particular, we are alarmed by both Department of Interior (DOI) and U.S. Department of Agriculture (USDA) decisions to sequester FY2012 funds due to Western states. Governors and state legislatures face the same kind of difficult decisions as they work to balance state budgets every year. Meeting those goals is always hard but never more so than during the economic conditions we are confronted with now.

We are deeply troubled with actions that the DOI and USDA have taken regarding their interpretation and implementation of sequestration, as set forth below.

Mineral Royalties

Western states were notified by DOI that receipts received and statutorily guaranteed to them as mineral-producing states under the provisions of the Mineral Leasing Act are being subject to sequestration under the Budget Control Act of 2011.

This is alarming to Western Governors. States' statutorily-guaranteed share of mineral royalty, bonus bid, rental and other receipts is not the equivalent of a standard federal expenditure. Any comparison between a mineral receipt transfer and an appropriated expenditure is fundamentally flawed. The federal government has no option except to transfer these pass-through funds to qualifying states. The federal government may not make payment of these funds to any other program or entity. Thus, DOI's action raises a number of legal and policy questions for Western Governors. We would ask that you provide us written response to the following questions:

Honorable Tom Vilsack

May 14, 2013

Page 2

- What is the precise legal basis justifying the DOI's action in sequestering FY 2012 state mineral royalties?
- Is this sequestration of state mineral royalties being applied with equal force to all states receiving mineral royalties? If not, why not?
- If the DOI is determined to go through with such a questionable action, why does it not apply its action equitably? Should not the federal share of royalties be reduced by a like margin? What is the legal justification for treating states different than the federal government treats itself?

Secure Rural Schools and Community Self-Determination Act

Western Governors were advised by the Chief of the U.S. Forest Service (USFS) they needed to return 5.1 percent of the obligated and distributed FY2012 Secure Rural Schools (SRS) funding. Governors were given the option to either repay the amount or have the funds taken from the FY 2013 Title II distribution. Further, although it was not mentioned in the advice letter, we have learned that the USFS plans to assess interest, penalties and administrative costs on sequestration amounts if states do not remit payment.

Under the 2011 Budget Control Act that triggered sequestration, certain percentages of spending reductions have been required to the majority of federal programs, projects and activities for the remaining months of FY2013. The Act does not include language authorizing retroactive application of the spending reductions or limitations. Nor does it contain language requiring reimbursement of funds that were already distributed in order to satisfy spending limitations.

The Secure Rural Schools and Community Self-Determination Act is intended to honor a federal agreement to states and counties to provide funding to make up for funds they would have received had the federal government continued to offer timber for sale on federal lands within their jurisdictions' boundaries.

Reauthorization of this Act in 2008 focused on providing emergency response services on federal land and increasing fire prevention efforts to protect communities, such as completing Community Wildfire Protection Plans. Western states and counties depend on these funds to provide fundamental services in areas heavily influenced and impacted by the presence of federal lands.

Just as with the mineral royalties issue, the Administration's actions regarding SRS funding raise serious legal and policy concerns for state and local officials. Western Governors ask the USDA/USFS to provide us written response to the following questions:

Honorable Tom Vilsack

May 14, 2013

Page 3

- Upon what specific legal authority does the USFS rely to justify its demand that states return obligated and distributed FY2012 funds in FY2013?
- Upon what specific legal authority does the USFS rely to justify imposition of the full sequester cuts solely on Title II funds?
- Are states subject to interest charges or punitive measures if funds are not returned? What would be the legal basis for these charges?

Western Governors request that the Departments and OMB provide us a clear, complete and expedited response to the questions posed in this letter. As your state partners, we would appreciate – and frankly expect – a more cooperative approach to matters that so directly impact our states' citizens.

We know that more difficult decisions must be made to get the federal fiscal house in order. However, looking forward, we would strongly encourage Congress and the Administration to focus on budget priorities that bolster long-term growth and competitiveness, are regionally equitable, and honor historic legislative and regulatory agreements with western states.

Sincerely,



Gary R. Herbert
Governor, State of Utah
Chairman, WGA



John Hickenlooper
Governor, State of Colorado
Vice Chairman, WGA

cc: Western Members, U.S. House of Representatives
Western Members, U.S. Senate