

**1300 I Street
Sacramento, California 95814
Phone: (916) 323-1992
Fax: (916) 323-0241
Cell: (916) 833 2603
Web: www.CWAGweb.org**

September 19, 2013

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

Dear Secretary Vilsack:

The undersigned members of the Conference of Western Attorneys General strongly object to the decision by the Department of Agriculture and the United States Forest Service to misuse the Budget Control Act (BCA) of 2011 to sequester revenues owed to states under the Secure Rural Schools and Community Self-Determination Act (SRS) (P.L. 112-141), Twenty Five Percent Fund Act (25% Fund), and Bankhead Jones Farm Tenant Act (Grasslands payments). These funds are statutorily guaranteed to states and counties where National Forests and National Grasslands are located and are vital to their local economies and citizens.

We continue to believe the sequestration of these funds is inappropriate, contrary to the historic relationship between our governments, and may lack legal justification in the first instance. However, we are now concerned that the Department will not be returning the sequestered funds to the states and counties, as required by the laws governing sequestration and contrary to the practices of other federal agencies.

As you know, the 25% Fund (16 U.S.C. 500) and Grasslands payments (7 U.S.C. 1010-1012) are statutorily-guaranteed shares of USFS receipts for timber, recreation, grazing, minerals and other uses of National Forests and National Grasslands that are passed through to states and counties. These transfers do not come from a General Treasury fund, but are instead directly funded by federal receipts. The funds should not be subject to sequestration and USDA should immediately cease sequestration of these pass-through funds.

Similarly, the SRS is intended to honor the 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. A substantial portion of the funding for SRS payments comes directly from federal receipts that should be passed through to states and counties and likewise not subject to sequestration.

Furthermore, notwithstanding the above objections to the sequestration of these funds, the laws governing sequestration require the federal government to make all sequestered amounts available to the states in subsequent years. As the fiscal year comes to a close, the undersigned states hereby demand USDA make the sequestered funds available in fiscal year 2014.

The Balanced Budget and Emergency Deficit Control Act (BBEDCA) of 1985 as amended requires the SRS payments, 25% Fund payments, and Grasslands payments to be made available to the states. Section 256(k)(6) of the BBEDCA states that:

*Budgetary resources sequestered in revolving, trust, and **special fund accounts** and offsetting collections sequestered in appropriation accounts shall not be available for obligation during the fiscal year in which the sequestration occurs, but shall be available in subsequent years to the extent otherwise provided in law.* (emphasis added).

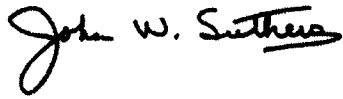
Section 302 of the BCA explicitly requires this section to be followed for the current sequestration. Thus, as relevant here, any special fund account sequestered in FY 2013 or following years must be made available to the states and counties starting in FY 2014. SRS payments, 25% Fund payments, and Grasslands payments are all special fund accounts. The USFS, as well as every other federal agency, numbers their accounts based on the "fund group" as designated by the U.S. Treasury Department. According to the Office of Management & Budget, account numbers 5000-5999 signify that an account is a special fund account. Payments to States, including SRS payments and 25% Fund payments, are paid out of the account "Payments to States, National Forrester Fund" which has the account number of 5201. Grasslands payments to counties are paid out of the account "Payments to Counties, National Grasslands, Forest Service, Agriculture" which has the account number of 5896. Because each of these accounts is a "special fund," the USDA is obligated under Section 256(k)(6) of the BBEDCA to make the relevant sequestered payments available to the states.

Recently, the Department of Interior has applied the refund mechanism of Section 256(k)(6) to MLA royalties sequestered in FY 2013, soon to result in funds made available to many Western states in FY 2014. This is consistent with the 1986 sequestration when other federal departments followed this practice by returning sequestered amounts from FY 1986 special fund accounts in FY 1987.

The undersigned Western states formally request that you confirm in writing that these funds will be made available to the states and counties, as required by law. We expect the Secretary to administer the sequester in accordance with the law and in cooperation with state partners.

We would appreciate a prompt response to this request before the end of the current fiscal year.

Sincerely,



John Suthers
Colorado Attorney General



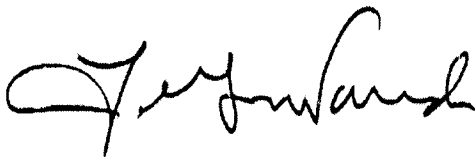
Michael Geraghty
Alaska Attorney General



Tom Horne
Arizona Attorney Gen



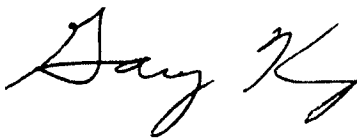
David Louie
Hawaii Attorney General



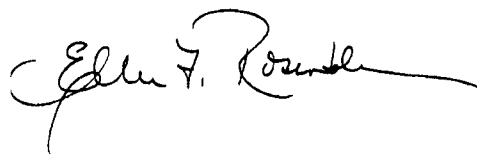
Lawrence Wasden
Idaho Attorney General



Tim Fox
Montana Attorney General



Gary K. King
New Mexico Attorney General



Ellen Rosenblum
Oregon Attorney General



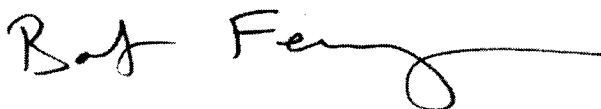
Marty Jackley
South Dakota Attorney General



Catherine Cortez Masto
Nevada Attorney General



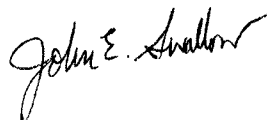
Peter Michael
Wyoming Attorney General



Bob Ferguson
Washington Attorney General



Wayne Stenehjem
North Dakota Attorney General



John Swallow
Utah Attorney General

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