

July 1, 2024

Re: Input on America's Groundwater Challenges

Submitted at pcast@ostp.eop.gov

To the President's Council of Advisors on Science and Technology:

We, the undersigned trade associations, represent a large cross section of the nation's construction, transportation, real estate, mining, manufacturing, forestry, agriculture, energy, wildlife conservation, and public health and safety sectors – all of which are vital to a thriving national economy and provide important resources and good paying jobs in local communities across the United States. We hope that the administration will continue to work with our sectors as partners in protecting and enhancing the environment.

States have historically had purview for managing groundwater, with the federal government providing resources for monitoring and reporting through the U.S. Geologic Survey (USGS). We urge the Council to ensure that any efforts relating to groundwater start with discussions with the states. Below are actionable ideas for the Council to consider.

Groundwater is Effectively Managed by the States and Tribes and this Should Continue

States and Tribes have been effectively managing groundwater and water supply “over many decades, and with federal encouragement,” and in many cases, states and tribes have done so for more than 100 years.¹ These include (but are not limited to) state and regional water plans, regulation, and certification of water well drilling, flood and drought prevention. Unfortunately, we understand that many states were not made aware of the Council's effort early in the process and as a result some are unable to comment. The Council should ensure that it works collaboratively with States and Tribes with expertise in groundwater management on this initiative. It should also avoid developing policies or directives that risk “undermining the states' longstanding regulatory authority over land and groundwater.”²

State and local governments are experts on groundwater which is why they generally have legal authority over groundwater. They use a “variety of management systems for determining the legal rights and liabilities pertaining to groundwater,” including the absolute ownership doctrine, correlative rights doctrine, prior appropriation rights, and public trust management, or a combination of management systems.³ States and tribes are particularly suited to protect and regulate groundwater given that groundwater and land use are inextricably intertwined and thus, the extent and manner of regulation vary widely depending on local geology and

¹ See *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1471 (2020).

² *Id.* at 1476.

³ See Overview of Groundwater Regulation, Sea Grant Law Center, available at <https://nsglc.olemiss.edu/projects/waterresources/files/overview-of-groundwater-regulation.pdf> (last visited July 1, 2024).

groundwater use.⁴ This regulation is not theoretical: a nationwide survey on groundwater regulation revealed that all 49 states that responded (and the District of Columbia) do, in fact, regulate groundwater.⁵

The “complicated nature of groundwater laws and practices” means that “any new executive branch action...that affects groundwater resources may perturb long-established state and local groundwater management regimes.”⁶ Disrupting this structure could have far reaching and potentially negative consequences. Given the longstanding state and local expertise on groundwater management, and the complex legal framework regarding groundwater, the Council must ensure that its actions do not infringe on the ability of States, Tribes, and local governments to manage groundwater resources.

The U.S. Geologic Survey Already Works with State Partners on Groundwater Issues, and this Should Continue

Federal funding for research on groundwater issues flows through USGS and goes to state partners such as geologic surveys and other state agencies to continue to collect and analyze scientific data on groundwater inventory, use, recharge, and flow for a better understanding of nationwide groundwater issues as well as modeling and anticipation of changes in the inventory, recharge, and flow of groundwater in the context of the overall water cycle.

USGS and state agencies should also work to involve and educate communities across the country on the importance of groundwater and its protection. The USGS has technical expertise on this issue and should continue to collaborate with states on groundwater efforts.

Industry Needs to be Involved in Groundwater Policy and Incentives Considered

Our industry sectors rely on clean and reliable groundwater to provide the products needed by Americans every day. We urge the Council to ensure that our associations and member companies are included in the development of this report. Our members are committed to environmental stewardship and the efficient use and reuse of groundwater resources. They have a deep understanding and on-the-ground experience in diverse regions across the country in how to efficiently use, reuse, and manage groundwater. To maximize public participation, the Council should ensure that any comment opportunities, public meetings, or other opportunities to provide input on this effort are well-publicized and published in the *Federal Register*.

We also encourage the Council to consider incentives and funding for research and development efforts to identify technically viable methods to increase recycling of industrial

⁴ 2 Waters and Water Rights § 19.04 (2019).

⁵ Sharon B. Megdal et al., Groundwater Governance in the United States: Common Priorities and Challenges, 53 Groundwater 677, 678 (Sept.-Oct. 2015).

⁶ Cong. Research Serv., The Federal Role in Groundwater Supply (May 22, 2020), *available at* <https://crsreports.congress.gov/product/pdf/R/R45259#:~:text=Managing%20groundwater%20resources%20large%20has,a%20lesser%20extent%2C%20federal%20law>.

wastewater and grants for capital projects associated with water recycling. We support incentives to facilitate the early adoption of water saving products and practices that can lead to a reduction in fees and improve tax credit programs. Any forthcoming proposal should be voluntary, not cost-prohibitive, sufficiently flexible and include options for industry to improve the efficient use and reuse of groundwater resources.

Thank you for your consideration of these comments. We look forward to working with the Council on this issue and to enhance groundwater management in the U.S.

Sincerely,

American Exploration & Mining Association
American Farm Bureau Federation
American Fuel & Petrochemical Manufacturers
Associated General Contractors of America
National Asphalt Pavement Association
National Association of Home Builders
National Association of REALTORS®
National Association of States Departments of Agriculture
National Mining Association
National Stone, Sand and Gravel Association
RISE (Responsible Industry for a Sound Environment)
Southeastern Lumber Manufacturers Association
U.S. Chamber of Commerce