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U.S. Senate Environment and Public Works Committee Hearing Addressing Cooperative Federalism: Arkansas Department of Environmental Quality Director Becky Keogh Testimony

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The United States Senate Environment and Public Works Committee (“Committee”) held a hearing on March 9th entitled “*Cooperative Federalism: State Perspectives on EPA Regulatory Actions and the Role of States as Co-Regulators*” (“Hearing”).

Arkansas Department of Environmental Quality (“ADEQ”) Director Becky Keogh was among the state environmental regulators invited to testify.

Senator James M. Inhofe of Oklahoma is the Chairman of the Committee.

Chairman Inhofe had previously written a number of states (including Arkansas) stating he was exploring the concept of “cooperative federalism”. Chairman Inhofe’s January 12th letter to Director Keogh describes cooperative federalism in the context of the Clean Air Act and Clean Water Act as requiring state and federal governments to work together in meeting federal actions

<http://www.mitchellwilliamslaw.com/united-states-senate-environment-and-public-works-committee-chairman-inhofe-sends-letters-to-arkansas-and-other-committee-member-states-requesting-feedback-on-state-implementation-of-us-environme>. The letter noted a number of federal regulations that are

characterized as requiring states to expend significant resources to meet “competing deadlines”.

The focus of the January 12th letter and the Committee hearing was whether the state resources are available to comply with current federal regulatory environmental requirements and if these mandates fit within the concept of “cooperative federalism”.

ADEQ Director Keogh’s written statement notes by way of initial summary that:

We in Arkansas are seeking to drive regulatory policy and programs that balance effective environmental results of clean air and water, assure long-term resource management, affordable energy, and economic-growth goals that are important to our citizens, businesses, and the communities in which they seek licenses to operate. We want a state that can attract the newest generation of professionals who seek communities that offer health living and the world-class recreational options that we enjoy in Arkansas. Arkansas is invested heavily in assuring that we are wise stewards of the abundant and clean water, healthy breathing air, and the amazing vistas with which we have been blessed. We do not take our name

of “The Natural State” lightly. We strive to fairly and consistently serve the corresponding and complimentary roles of environmental stewardship and economic development.

Ms. Keogh notes a prior successful working relationship with the federal Environmental Protection Agency (“EPA”) stating that until the last several years “we would propose and EPA would dispose” (referencing a “relatively balanced seat at the table”). However, as to the present, she expresses concern regarding the relationship stating:

The cooperative-federalism model that has defined Arkansas’s relation with the EPA beginning in the 1970s has morphed in something that can be better described as coercive federalism.

Cited as an example is a decrease in “time and tolerance” for Clean Air Act State Implementation Plans and a “dramatic increase in EPA takeovers, or Federal Implementation Programs”.

As to the cost of implementation of federal regulations she states:

States shoulder almost ninety percent of the cost of implementation of federal environmental regulation. However, until recent years, we were glad to pick up the tab because the cost to the states was mitigated by the healthy respect and accompanying deference we received from our federal regulatory partner.

Ms. Keogh’s statement also expresses a need for Congressional assistance in “resetting the needle to the point of its origin, whether this task be accomplished by way of Congressional clarification or judicial charge or the two working in tandem.” The recent revisions to the Clean Air Act Ozone National Ambient Air Quality Standard are cited as an example of EPA’s imposition on states of costly mandates that overlap or conflict with other regulatory requirements.

Concern is also expressed about federal oversight of Clean Water Act water quality criteria:

For example, in relation to the Clean Water Act, we are left to navigate federal interpretation of Arkansas’s water-quality criteria. This system of water-quality protection was designed to establish natural water-quality conditions for extremely pure water streams under a robust monitoring protection. However, under recent federal interpretation, these once state-developed, extraordinarily heightened criteria have now become unrealistic and often un-achievable minimum water-protection standards. The EPA executed the ultimate bait and switch.

The other state witnesses at the hearing included:

- Steven Pirner, PE – Secretary, South Dakota Department of Environment and Natural Resources
- Randy C. Huffman - Cabinet Secretary, West Virginia Department of Environmental Protection
- Deb Markowitz – Secretary, Vermont Agency of Natural Resources
- Ali Mirzakhilili – Director, Delaware Air Quality

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