National Water Resources Association

2006

Mission Statement & Objectives

Resolutions

Position Statements

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Mission Statement and Objectives

Mission Statement

The mission of the NWRA, through its adopted objectives and resolutions, is to:

Promote the development, control, conservation, preservation and utilization of the water resources of the nation,

Cooperate with and assist federal, state and local agencies in securing prompt approval of and funding necessary for the construction, operation, maintenance and replacement of water projects,

Preserve and promote the rights and interests of the states in their water resources,

Conduct a public information program and support research programs which will clearly inform the public of the primary and secondary regional and national economic benefits and the great contributions irrigation and other water resources developments make to human needs, including food, recreation, sanitation, power, social progress, and a high quality environment, and to the overall strength and needs of our nation, and

Establish an objective factual record on the environmental and economic impacts of existing and proposed water resources development projects; present such factual record in appropriate forums; assist, as appropriate and justified, in the defense of water resource development projects; and present testimony before Congress, state legislatures and other legally constituted agencies of government that will lead to the orderly authorization, funding, construction and operation of needed and meritorious projects.

Objectives

A. Water resource programs and strategic long-term plans should recognize:

1. The inherent right and obligation of the people of all states to develop fully their water resources within the framework of applicable interstate compacts and the water laws of the respective states.

2. Integrated and multiple utilization of water development projects.

3. Authorization of and adequate appropriations for projects which will develop, control, conserve and utilize total water resources.

4. The need for additional long-term water storage necessary to sustain local economies, customs and to provide adequate water for domestic, agriculture, industrial and other water users during extended droughts.

5. The use of reclamation project water for generation of hydroelectric power in conformance with the authorized project purposes. The development of current and projected reclamation programs using the sale of such power and energy to assist in paying for the reclamation project. That utilization, either directly or by exchange, of reclamation power reserved for reclamation project purposes shall have priority over all other uses and the rates for received reclamation power continue to be based on cost-based rate making policies in accordance with the principles of Reclamation Law.

B. To best serve the public interests the following policies should be adhered to:

Compliance with State Laws

The federal government, its agents, employees, licensees and permittees shall comply with all applicable state laws and regulations governing the appropriation, distribution, control or use of water, whether such water originates on federally owned or controlled lands or elsewhere.

Protection of Private and Public Property

Property needed for federal or state use shall be acquired by contract, purchase or condemnation proceedings in all instances. When land in a reclamation project is taken for public use, compensation for the taking must include payments which will adequately fund the repayment obligation for construction charges and operation and maintenance costs allocable to such land together with the costs of modifying or relocating water facilities made necessary by such taking.

Preservation Legislation

In the designation by the Secretary of Interior, Secretary of Agriculture or Congress of wild and scenic rivers, wilderness and other such preservation legislation, due consideration and recognition shall be given to the principles of multiple use and recognition of water rights under the laws of the respective state. The designation of a river as wild and scenic occurs only after an in depth study of alternate uses and after approval by affected states. Lands necessary to the development and use of water storage or diversion facilities shall be excluded from wilderness designation.

Access to Federal Lands

Each federal department responsible for federal lands shall permit normal reasonable access to such lands consistent with the needs of preservation, maintenance, construction or reconstruction of water facilities.

Adherence to Project Purposes

No administrative change in the control of water and land use or development of a reclamation project shall occur unless approved by the project beneficiaries.

Elimination of Duplicative Research

Water departments and government agencies responsible for water resource development shall adopt procedures to eliminate or minimize duplication of investigation, research and basic work common to them, and shall disseminate information developed by them to the public at reasonable cost.

Transfer of Title upon Repayment

Upon completion of repayment to the United States and request to the Secretary of Interior by the contracting party, fee title to any works, facilities or land, which was paid for by the contracting party, shall be conveyed to such contracting party.

Watershed Management/Water Storage

Develop watershed management programs to:

(a) Reduce erosion and transported sediment thereby stabilizing stream conditions and improving water quality;

(b) Improve efficiency of water deliveries to downstream users;

(c) Decrease flood hazard to improved areas thereby protecting developed lands adjacent to river channels and other improved areas.

(d) Promote the beneficial use and reuse of water resources.

Tax-Exempt Bonds

Legislation and regulations should strengthen the tax exempt status of bonds issued or to be issued by public entities to provide for irrigation, municipal and industrial water supplies, sewage and solid waste disposal facilities, air and water pollution control facilities, and the production and marketing of electrical energy without regard to the area in which such services are provided and without regard to whether the purchaser of such services is a public or private entity.

Environmental Impact Statements

In the preparation of future recommendations and reports on water resource projects, the requirements of the National Environmental Policy Act shall include within a single project report or recommendation all beneficial and adverse environmental and economic impacts.

National Energy Policy

Hydropower should be recognized as a renewable energy resource and a valuable domestic energy source.

Encourage exploration and use of our energy producing natural resources, and urge Congress to provide funds for continued research and development of new technology to reduce water consumption in the development of such energy sources.

Water Resource Investment and Financing

Legislation shall be adopted to establish procedures for the orderly development of national water resources investment programs to establish a revolving fund for financing operation, maintenance and replacement costs of certain water and power projects which are currently funded by appropriations.

Weather Data Collection

Provide sufficient funding and staffing to allow the Natural Resources Conservation Service, the Geological Survey and the National Weather Service to continue to provide precipitation, temperature, snow surveys, stream flow watershed data, surface water supply forecasts and ground water supply monitoring in a cost effective manner to all interested entities; and to retain the related gathering, interpretive, dissemination and archival services provided by those agencies.

Dam Safety

Federal agencies shall maximize the use of state programs and expertise for dam safety.

McCarran Amendment

Oppose all efforts to repeal the McCarran Amendment and oppose any change, amendment or repeal of the McCarran Amendment which would give exclusive jurisdiction to the federal courts or deprive state courts of jurisdiction over the United States and any beneficiaries of trusts under which the United States has a trust relationship in water rights adjudications.

Review and Approval of Agency Regulations

Congress and the legislatures of each respective state, when enacting legislation, shall define the extent to which agencies shall be authorized to adopt regulations implementing legislative enactments, and shall provide that each agency shall be liable for any damages resulting from the adoption and enforcement of regulations not authorized by the legislative enactment.

Overdesign Criteria for Water Projects

Federal and state governments shall eliminate all practices involving over design and excessive requirements beyond acceptable engineering and safety standards that cause unnecessary expenses for water projects.

Rural Clean Water Actions

Local landowners and Natural Resources Conservation Service and area water agencies or local conservation districts shall be encouraged to voluntarily implement best management practices on agricultural lands and waters of the nation.

Water Conservation

Urge support of Reclamation's commitment to a proactive, but non-regulatory, approach to administering the water conservation provisions of the Reclamation Reform Act of 1982 (RRA), and to the continuing development of the Water Conservation Field Services Program (WCFSP) as an incentive-based program of technical and financial assistance, through voluntary federal-state-local partnerships, as the appropriate long-term role for Reclamation in encouraging water conservation

Support development of reasonable and cost effective local water conservation practices to supplement prudent water supply planning and development for future needs.

Protection of Water Resources from Contamination

Congress and the federal agencies shall increase their financial and technical support, cooperate with, and assist state and local agencies in monitoring and regulating the generation, treatment, storage or disposal of hazardous wastes, other toxic material and other contaminants so as to prevent impairment of water resource programs; and to implement in a timely and cost effective fashion salinity control programs.

Cost Sharing

Establish a federal policy on cost sharing by state and local entities for the reimbursable portion of water resource projects that:

(a) Fairly and equitably applies to all water users and recognizes and embodies the principles of Reclamation Law;

(b) Recognizes the value and benefit to the federal government of the goods and services, national and regional economic benefits, and the substantial tax revenues produced as a direct result of water development projects and the significant in kind and financial contribution that has been made by state and local entities to the development of these projects, which in kind contribution should be valued on a parity with federal contributions;

(c) Attributes the costs resulting from federal regulatory requirements, features which serve federal purposes, and delays relating to such requirement or purposes, to the federal government; and

(d) Guarantees the full rights of nonfederal sponsors to participate in all planning, development, construction and operation and maintenance on all cost shared projects.

Uniform Reallocation Payment Standards: Corps Reservoirs

Congress and the Administration through the United States Army Corps of Engineers shall adapt and follow a uniform policy for the recovery of original costs only, rather than current replacement costs for the use of reservoir storage capacity which lawfully may have been reallocated for uses other than those for which a reservoir may have originally been authorized.

Federal Power Program

That Congress maintains support for the federal power program and existing repayment policies and rejects proposals for mandatory scheduled amortization, i.e., straight line or compound interest, market rates, and reject proposals for auctioning PMA assets, or other proposals that will reduce competition in the electric utility industry in areas served by PMA's or change long-standing commitments or policies."

Risk Assessment

In the establishment of environmental regulatory criteria all federal and state agencies should engage in a risk assessment process which includes independent scientific peer review, comparative risk analysis across environmental media, interagency coordination, and a clear identification of assumptions, default options, criteria for conducting uncertainty analysis, the range of risk to humans and other species, and such other information as would be useful to the agencies and the public in determining the appropriate level of acceptable risk.

Recycled Water Projects

Adequate federal financial assistance for water recycling and groundwater recovery projects will greatly improve Western States' Water supply reliability and provide environmental benefits through effective water recycling and recovery of degraded groundwater.

In furtherance of the mission statement and objectives of National Water Resources Association and to address current matters of importance to its membership, the Association resolves:

2006 Resolutions

Resolution 2006-1 *Clean Water Act Reauthorization*

To urge Congress and the Administration to incorporate the following principles in any activities regarding the Clean Water Act:

1. Section 101(g) of the Act should be reaffirmed as applying to all sections of the Clean Water Act and all programs thereunder, including programs under sections 208, 303, 319, 401,402, 404 and 510(2) and that the Clean Water Act and any amendments thereto shall not directly or indirectly create a federal water quality law or program which supersedes, abrogates or impairs state water allocation systems or compacts and rights to water created and managed thereunder.

2. The Clean Water Act should not be expanded, construed or applied to create a national recreational, cultural, historical, ecological, habitat, aesthetic, instream flow, or land use law or program, or otherwise be utilized to regulate or address anything other than the protection of designated water body uses and the control of discharges by point and nonpoint sources of pollutants to such water bodies.

3. Section 401 of the Clean Water Act shall not be utilized by EPA or any federal agency directly or indirectly, to impose or require instream or by-pass flows as a condition of any federal permit, license, or approval or to control activities which do not result in a point source discharge of pollutants.

4. Section 404 protections and allowances for water dependent activities should be expanded, particularly with regard to permitting for facilities which are related to the exercise of state created water rights. Deference should be accorded to local determination of water project purposes and need. Section 404 should be amended to provide for:

    a. Local Responsibility - The primary responsibility for determining the need for, timing, and the siting of a water project lies with the local and state governmental units or other sponsoring individual or organization subject to the state laws governing the appropriation of water. Consistent with Sections 101 and 510 of the CWA, the Corps of Engineers should show due deference to the determinations of such entities upon these matters.

    b. Decision Authority - The Corps of Engineers has the decision authority to issue 404 permits and the Environmental Protection Agency has oversight

responsibilities. The ability of the EPA Administrator to veto permit applications should be limited to giving unresolved concerns to the Secretary of the Army and allowing the Secretary to make the final decision.

c. General Permits - The Corps may adopt simplified procedures for issuing general and nationwide permits for transferring 404 permit authority to states; certain categories of water such as headwaters, isolated waters and certain intrastate waters should be excluded from permit requirements; substitute a five year review period for nationwide permits; and reduce review processes with other federal and state programs.

d. State Water Law - The Corps or EPA may not prohibit or in any way restrict or condition water diversions, depletions or the consumptive use of water or water rights which are authorized or decreed under state law.

e. Guidelines - The EPA and Fish and Wildlife Service must establish guidelines which provide objective mitigation criteria; allow premitigation; and defer to the Corps in matters of engineering, economics and other technical areas within their expertise.

f. Memorandum of Agreement - The February 7, 1990 Memorandum of Agreement on mitigation between the Corps and EPA establishes a regulatory norm and should be rescinded until proper public rulemaking processes are followed. The same is true regarding the Corps Wetlands Delineation Manual. Analysis of practicable alternatives should allow credit for mitigation in determining the least environmentally damaging alternative, and a balancing of project benefits against reasonably foreseeable wetland harm should be undertaken.

g. Artificial Water Areas - Limit Section 404 and wetland jurisdiction so that it does not apply to water surfaces and water related vegetation areas created artificially incidental to irrigation, hydropower, flood control and water supply projects.

h. Documentation - Require EPA to document its concerns and recommendations to the Corps as part of the permit process, after thorough analysis of project impacts. The Corps would then have to consider EPA's formal statement in a manner similar to a biological opinion rendered by the Fish and Wildlife Service under Section 7 of the Endangered Species Act.

i. Continuing Cooperation - All relevant agencies, including EPA, shall participate in the preapplication consultations and shall continue to work constructively with applicants to resolve any problems that may arise.

j. Maintenance - Provide in section 404 for routine ongoing maintenance activities to be covered by the initial permit process so that periodic new permits would not be required for repetitious maintenance activities essential to a project.

k. Exemptions - Provide an exemption for construction of emergency municipal water supply projects and activities directly related to federal (Stafford Act) or state declared disaster recovery.

5. Non point source pollution control under the Clean Water Act should be pursued through a tiered approach for non point source management which begins with the voluntary cooperative implementation of best management practices. The states should have primary responsibility for identifying and administering non point source management programs. Federal funds and assistance should be made available for implementing BMP's, as funding was provided for POTW's under the 1977 Clean Water Act and its predecessor, the 1972 FWPCA Amendments.

6. Establish appropriate use classification and water quality standards for ephemeral and effluent dependent streams, and recognize, in the adoption of water quality standards, the value of water reuse and increased instream flow associated with reclamation and reuse projects.

7. The identification and implementation of any anti-degradation policy, including but not limited to, the designation of outstanding national resource waters, shall be a state prerogative.

8. To address water conservation and water use efficiency measures separately and independently of the Clean Water Act, so that such measures may be evaluated on their own merits rather than tied to permit or grant and loan programs under a Clean Water Act whose purpose is the elimination of pollutant discharges to the waters of the United States.

9. No provision of the CWA should allow a state or Indian tribe to apply its water quality standards in such a fashion as to (1) supersede, impair, or abrogate the water allocation system of another state or tribe or waters decreed thereunder, or (2) cause an unreasonable economic burden to be placed upon such other state or tribe where that state or tribe has ensured the establishment of classifications and standards for waters within its jurisdiction and such standards are being appropriately enforced.

10. A Good Samaritan provision should be adopted which allows for the prompt voluntary clean-up of abandoned mine drainage without fear of unwarranted liability attaching to such actions.

Resolution 2006-2 *Implementation of the Clean Water Act*

To urge the Administration, in implementing the Clean Water Act, to:

1. State Water Rights - Recognize that nothing in the Act, including the water quality standards provisions of section 303, the certification provisions of section 401, and the permit requirements of section 404 should be construed or used to impair, abrogate or supersede rights to quantities of water allocated by the respective states for beneficial uses.

2. Instream Uses - Reaffirm the authority of the states to determine stream classifications and to establish appropriate water quality standards for the protection of such classifications and clearly require a determination of the cost-to-benefit relationship of water quality standards and related effluent limitations.

3. Return Flows - Recognize the importance of irrigation and wastewater return flows to instream flows to instream quality and quantity, including maintenance of the aquatic ecosystem; maintain the irrigation return flows exemption from treatment as a point source.

4. Indian Tribes - Consult effectively with the affected states sharing common water bodies with Indian tribes in developing:

    a. Regulations for treating the tribes as states under sections 303, 401, 404 and other provisions of the Act, and

    b. A mechanism for resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by states and Indian tribes located on common bodies of water.

5. Nonpoint Source Program - In implementing the nonpoint source program provisions of section 319, EPA should:

    a. Consult closely with the Bureau of Reclamation, Natural Resources Conservation Service, and all affected state and local entities.

    b. Orient the nonpoint source control program towards cost effective and reasonable voluntary measures which will not interfere with water rights and water allocations under state law and interstate compacts, and which are demonstrably necessary to protect beneficial uses made of water supplies.

    c. Appropriate adequate funds to implement the provisions of the Act, including those authorized for section 319 nonpoint source control such as abatement of abandoned mine drainage affecting public drinking water supplies.

d. Acknowledge that its authority does not extend to control over the removal of flows, including dilution flows.

6. National Estuarine Program - Recognize the importance of protecting public water supplies diverted from streams above estuarine areas within the section 320 National Estuarine Program, and allow full participation in the program by public agencies relying on those water supplies.

7. Nationwide Permits - Diligently renew existing nationwide (404) permits as they expire and promulgate new nationwide permits so as to ensure that such general permits are readily available to the regulated community for the conduct of all activities which cause only minimal adverse environmental effects, either separately or cumulatively, including those activities previously authorized under NWP 26.

8. Protection of Wetlands and Municipal Water Supplies

   a. Encourage the Corps of Engineers to make consistent its regulatory and National Environmental Policy Act review for municipal water supply reservoirs with a permit application generally outlining practicable alternatives that would serve as the "scope" for subsequent studies and review. A principal feature of such studies and review should be deference to local determinations of project purpose and need.

   b. Require rules for prioritizing wetland resources, development of wetland mitigation banks, and integration of wetlands protection with drinking water requirements.

   c. Acknowledge sole local control over intrastate wetland areas that are not hydrologically connected to other bodies of water.

   d. Acknowledge that the incidental or diminimus discharge of dredge or fill material in land clearing, draining, excavation, or other activities not historically subject to § 404 jurisdiction will not be cause for regulating such actions under § 404, or for examining those potential impacts of an activity unrelated to the discharge.

9. Interstate Application - Recognize the authority of individual states to adopt classifications and standards and enforce the same within their territorial boundaries, while providing for comment by potentially affected downstream states upon discharge authorizations or federal licenses or permits issued in upstream states, and for the consideration of downstream states' concerns in the issuance of such permits or licenses, while avoiding the vesting of any veto authority in the downstream state over discharges or activities occurring in the upstream state.

10. Coordination with Endangered Species Requirements - In the establishment and approval of water quality standards, the states, EPA, NOAA and the USFWS should work cooperatively so as to ensure that water quality standards with a nexus to endangered species or their habitat are examined in a timely fashion and in conjunction with the state triennial review process, such standards to be set on a site-specific basis after the completion of appropriate, peer reviewed scientific research.

11. TMDL's - Afford the states and tribes maximum flexibility in meeting the requirements of Section 303(d) of the Act, including the identification and prioritization of impaired waters and the implementation of controls upon point and nonpoint sources in order to attain and maintain classified uses.

12. Water Quality Standards - In the consideration of new criteria and standards, with specific reference to sediment criteria, flow criteria, temperature criteria, biological criteria, and wildlife criteria, EPA must defer to state and local control over land use and water allocation decisions and must refrain from implementing any such criteria to the extent it may interfere with such state and local prerogatives.

13. The point source discharge permit provisions of section 402 of the CWA should not be triggered by either: (1) the mere transfer of water, whether by ditch, pipeline, tunnel or other conveyance structure, for purposes of applying the water to a beneficial use; or (ii) the application of herbicides or pesticides for their intended use in accordance with label directions.

Resolution 2006-3 *Dam Removal*

Proposals to breach or remove dams pose an alarming challenge to water supply, flood control, water rights, water quality and power production for million of consumers. Dams provide significant regional and national benefits, including:

- Municipal, agricultural and industrial water supply
- Clean, renewable hydropower
- Flood control
- Navigation
- Recreation and fishery benefits
- Environmental resource restoration

Removal of federal dams would negatively impact the federal debt repayment obligation associated with such dams. Therefore, proposals to bypass, breach, or remove dams and to alter, abrogate or restrict the state or local rights to manage its water resource and associated storage infrastructure should be rejected. The vast benefits of the nation's

multipurpose water projects far outweigh any alleged positive result from removal or breaching of dams.

Resolution 2006-4 *USGS Cooperative Streamgauging Program Funding*

1. To urge Congress to give a high priority to the allocation and appropriation of sufficient funds to continue and restore the U.S. Geological Survey's Cooperative Water Program and National Streamflow Information Program (NSIP) to previous levels of full funding.

2. That the United States Department of Interior request increased funding for the USGS's cooperative streamgauging program and that the various state water user associations encourage their respective states to increase funding for this vital cooperative program.

Resolution 2006-5 *Irrigation District Contract Claims Against the BOR.*

The NWRA supports legislation that will amend 43 U.S.C. Section 390uu of the Reclamation Reform Act of 1982. The legislation should provide that irrigation districts contracting with the United States can sue the United States for breach of contract under 43 U.S.C. 390uu. This provision is a waiver of sovereign immunity for irrigation districts contracting with the United States.

Resolution 2006-6 *Reauthorization of the Endangered Species Act*

To urge that Congress, as part of the reauthorization process to amend the Endangered Species Act (ESA) of 1973 to provide that:

1. decisions regarding protection and conservation of endangered species and associated critical habitat should be based on sound science and measurable benefits;

2. only those subspecies which are genetically significantly different from the primary species be protected;

3. the use of artificial propagation in achieving the purposes of ESA be clearly supported;

4. when a species is listed, the appropriate government agency shall simultaneously publish a recovery plan that identifies: a) the proposed actions for recovery, b) the estimated cost of recovery, c) the probability of recovery if actions are taken, d) the federal action agency activities that will be subject to Section 7 consultation as a result of the listing, 3) the preliminary "reasonable and prudent alternatives"

needed to avoid jeopardy and f) the potential economic impacts of recovery to regional economies;

5. quantifiable goals for delisting purposes be set for the recovery of a given species and/or designation of critical habitat;

6 authority of a federal agency shall not be implied by the Act to authorize the agency to acquire land or water, except on a voluntary basis, in carrying out programs for the conservation of listed endangered and threatened species;

7. the act shall prohibit a federal agency from in any manner impairing the right to Project water by the landowners within a Reclamation Project under water storage space holder contracts, repayment contracts or water service contracts duly executed and in existence or approved for execution at the time of any listing, or impairing any water right of any project; and

8. "no surprises" and "safe harbor" provisions be authorized and issued to non-federal parties entering into Section 10a Habitat Conservation Plans (HCPs) and Section 6 cooperative agreements those affected by Section 7 consultations.

9. federal agencies be allowed to increase habitat-focused species protections through more proactive, collaborative and incentive based management agreements with property owners and resource managers.

10. there be no designation of critical habitat below the highest water level of a water storage reservoir, structure, canal, or other artificial water delivery facility, if such habitat is periodically created and destroyed as a result of fluctuations in water levels caused by operation of the water facility.

11. involved agencies collect, use and consider local data on economic impacts resulting from critical habitat designation.

Resolution 2006-7 *Implementation of the Endangered Species Act*

To urge the Administration, in implementing the Endangered Species Act as enacted or as hereafter amended, to recognize that nothing in the ESA, including Section 7 consultation, shall be construed or used to justify the involuntary appropriation, acquisition or reallocation of property of others, including water rights, contractual rights to water or other contractual rights in existence at the time of the listing of any species for any purpose.

Resolution 2006-8 *FERC Licensing Procedures for Hydroelectric Development*

To urge:

1. Legislative and regulatory reform that requires federal resources agencies to consider the ramifications of their mandatory conditioning under the Federal Power Act and that requires the Federal Energy Regulatory Commission to have the tools necessary to expedite the relicensing process to ensure a timely relicensing process, protection of environmental value, and the continued generation of cost-effective hydroelectric power generation.

2. That FERC fully coordinate any licensing, relicensing, or amendments of hydroelectric projects with the United States Army Corp of Engineers or Department of Interior's Bureau of Reclamation, whichever is appropriate, and the state agencies in charge of water resource allocation in which the project is located, to ensure the inclusion of provisions in FERC licenses that will accommodate the objectives and goals of the US Department of Interior or the Corps of Engineers, as appropriate, and the state water plan and policies of the affected state, and that, in recognition of the primacy of the states to adjudicate and administer state-granted rights for the use of its water for irrigation, municipal, industrial or other beneficial uses, FERC not include any provision which is in conflict with existing state-granted water rights.

Resolution 2006-9 *Warren Act Amendments*

Reclamation law should be amended so as to permit, subject to appropriate review by project operators and repayment entities and full protection of, and consent by, existing project beneficiaries, the execution of contracts for the storage of non-project water in excess project space and project water in non-project space, including water for irrigation, municipal and industrial purposes and the use of excess capacity in distribution facilities by the project operator for conveyance of non-project water.

In addition, revenues from the storage of water in excess project space or use of excess capacity in distribution facilities shall be used first to satisfy operation and maintenance costs, then to satisfy construction costs, and then to be paid to project beneficiaries for use in the improvement of project facilities.

Resolution 2006-10 *Water Service Contract Renewal*

1. The Department of Interior vigorously assert that contracts executed under Section 9(e) of the Reclamation Project Act of 1939 must be renewed for the same quantity and availability of supply as has been historically used beneficially; and

2. The Department of Interior, and specifically the Bureau of Reclamation, expedite the timely renewal of such long-term water service contracts for the maximum

term allowable by law and include such other terms and conditions as may be mutually agreed upon by the long-term contractor and the Bureau of Reclamation.

Resolution 2006-11 *Colorado River Salinity Control*

1. Congress to implement, in a timely and cost effective manner, the measures to control Colorado River salinity authorized in the 1974 Colorado River Basin Salinity Control Act (Public Law 93-320) as amended by PL 98-569 and PL 104-20, in order to maintain, as required by federal law, the numeric salinity criteria adopted by the Seven Colorado River Basin states and approved by the U.S. Environmental Protection Agency. The Congress should also maintain a specific line-item for the Colorado River Basin Salinity Control Program in the Agriculture as well as the Energy and Water Development appropriations process; and

2. To authorize the Bureau of Reclamation to provide 25 percent of the construction costs (up to a maximum of $50 million) to provide grants to assist in constructing regional brine lines to maintain the long-term salt balance of the southern California coastal plain.

Resolution 2006-12 *Transfers of Reclamation Project Facilities*

To urge Congress to adopt legislation which confirms the right to receive title to federal reclamation facilities, water rights, reserved power and project rights, acquired lands and related lands and property by project beneficiaries who have operated and maintained the facilities and have repaid allocated construction costs whether paid over the term of the contract or prepaid, without further costs or obligations, upon request.

Resolution 2006-13 *Flow Augmentation*

To urge:

1. That the National Marine Fisheries Service and the Fish and Wildlife Service of the United States, when charged with the enforcement of the Endangered Species Act, recognize state water rights and compacts, and that in any biological opinion or recovery plan of said agency, it reject flow augmentation using previously appropriated water of water users or the Bureau of Reclamation for the benefit of water users, without the water user's consent and then only under such conditions as the owners of said water rights or the beneficial use may impose, and that no flow augmentation be a part of any biological opinion or recovery plan when such flow augmentation requires the use of water appropriated by others to mitigate activities of third parties, including the United States.

2. That Congress enact legislation which provides for the recovery of attorney fees and costs to owners of vested water rights, rights to water acquired under state law, or the beneficial users of water under such rights, incurred in the defense or protection of said rights from unlawful or unauthorized claims or demands for water of said owners or beneficial users to provide mitigation for or to support an incidental take decision for activities of third parties, including the United States.

Resolution 2006-14 *Uranium Mill Tailings Pile Removal and Remediation*

To urge Congress to provide adequate annual appropriations to provide for remediation and removal of the mill tailings pile on the Atlas uranium milling site near Moab, Utah to a safe location as well as for the continued monitoring of the groundwater and migration of water from the site into the river all as authorized by Congress' amendment of the Uranium Mill Tailings Radiation Control Act of 1978.

Resolution 2006-15 *Resolution of Resource Conflicts*

That the Secretary of Interior establish a procedure for timely resolution of conflicts in proposed uses of natural resources that will assure full prior consideration of the views of all affected federal, state and local agencies and full prior evaluation of economics, engineering and environmental factors; and that will prevent federal agencies from accepting contributions of interests in real property or taking positions in litigation or taking any other actions that would circumvent full and fair evaluation of those conflicts without first advising all affected federal, state and local agencies in a timely manner.

Further, when the interests in real property that have been contributed without full consideration of the views of all affected federal, state and local agencies impinge upon and/or preclude the implementation of essential water resource projects, such actions shall be null and void if and when the respective state permitting process finds it to be in the public interest to issue the necessary permits for implementation, and where such permits have been issued.

Resolution 2006-16 *Safe Drinking Water Supplies*

To urge Congress and the Environmental Protection Agency to support:

1. Protection against lead in drinking water: Assistance to state and local agencies in reducing lead contamination of public water supplies by:

    a. Providing effective technical and financial assistance for implementing the congressional ban on use of lead-bearing solder, pipes or fittings in drinking water plumbing systems;

b. Providing regulations for lead content in drinking water that allow public water suppliers adequate flexibility to achieve the optimum level of health protection that they can reasonably provide;

c. Focusing corrosivity control requirements on areas with a high potential for lead contamination in drinking water; and

d. Supporting a rational state and local public education program to broaden consumer awareness of lead contamination in the total environment.

2. Protection against radon in drinking water: Assistance to state and local agencies in controlling radon levels in drinking water by:

a. Providing regulations for radon in drinking water that allow public water suppliers adequate flexibility to achieve the optimum level of health protection at a reasonable cost; and

b. Supporting federal, state and local public education programs on the detection and control of radon in residential homes and buildings.

3. Protection against solid waste contamination in drinking water: Continue to enforce limitations on citing, construction and operation of solid waste disposal sites in areas where leachate from the disposal sites may threaten community groundwater supplies used as a source for public drinking water, in cooperation with state and local agencies.

4. Protection against arsenic in drinking water: Assistance to federal, state and local agencies in developing a reasonable arsenic drinking water regulation by:

a. Supporting national and regional occurrence data-gathering projects and epidemiological studies; and

b. Supporting research programs on treatment technologies, health effects, and analytical methods for arsenic in drinking water.

5. Protection against perchlorate in drinking water: Assistance to federal, state and local agencies in addressing perchlorate impacts by:

a. Encouraging and expediting the research necessary to establish an appropriate and scientifically-defensible MCL for perchlorate in drinking water supplies;

b. Encouraging and help to fund the inventory of sites throughout the United States that have used perchlorate; and

c. Supporting an assessment of potentially impacted drinking water supplies and encouraging the clean-up of perchlorate-contaminated supplies by persons responsible for such contamination.

6. Protection against Chromium 6 in drinking water: Assistance to federal, state and local agencies in developing a reasonable chromium 6 drinking water regulation by:

   a. Supporting national and regional occurrence data-gathering projects and epidemiological studies; and

   b. Supporting research programs on treatment technologies, health effects, and analytical methods for chromium 6 in drinking water.

7. Protection of sources of drinking water: Assistance to state and local agencies in protecting sources of drinking water supply and assuring that the highest quality drinking water is provided for consumer use at a reasonable social and economic cost by:

   a. Promulgating and implementing regulations consistent with the Safe Drinking Water Amendments of 1996 and Congressional intent;

   b. Providing state and local agencies with appropriate flexibility to administer their drinking water state revolving funds; and

   c. Modifying the existing EPA guidelines to allow such funds to be used for he construction and rehabilitation of dams or reservoirs, the purchase of necessary land, and the purchase or acquisition of required water rights, when such actions have been determined to be the most cost-effective alternative and environmentally sound solution for providing a safe and reliable supply of drinking water.

Resolution 2006-17 *Municipal Discharges Into Irrigation Works Exemption*

To urge the Congress to clarify and extend the present, limited exemptions from NPDES permitting provided by Section 402 (1) of the Clean Water Act by doing the following:

1. Include discharges composed of irrigation return flows from irrigated agriculture and discharges of storm waters not subject to permitting under Section 402 (p);

2. Include discharges composed of irrigation return flows from irrigated agriculture and discharges from permitted municipal storm water systems operating in permit compliance; and

3. Clarify the status of agricultural canals and drains that carry irrigation waters, or agricultural return-flows and storm waters, to the effect that these conveyance systems are not considered to be “waters of the U.S.”.

2005 RESOLUTIONS

Resolution 2005-3 *Integrated Resource Planning for Energy Consumption*

To urge the Department of Energy and Western Area Power Administration in any revisit or review of regulations as required by section 114 of the Energy Policy Act of 1992, to:

1. Recognize the special problems encountered by customers whose loads include substantial amounts of irrigation pumping.

2. Recognize the limited economic, managerial and resource capabilities that small customers have to accomplish integrated resource planning.

3. Recognize that long-term contracts for power supply are necessary to accomplish meaningful long-range integrated resource planning as required by the Act.

4. Fully recognize the requirements imposed by the Rural Electrification Administration.

5. Fully recognize integrated resource plans prepared in compliance with Federal, State or other initiatives.

Resolution 2005-6 *Groundwater Management and Protection*

To urge Congress and the Administration to consider the following:

1. Management of groundwater should be conducted at the most local unit of government with authority sufficient to protect the water resource.

2. The concept of federally mandated, interstate “groundwater” compacts is an unnecessary and undesirable imposition and infringement on state’s rights, and as such, is opposed.

3. The concept of mandated "watershed" management of groundwater reservoirs is an unnecessary and undesirable imposition and infringement on existing management authorities and, as such, is opposed.

4. Funding of groundwater management programs should recognize the following:

a. Available federal funding should be provided directly to local groundwater management districts which have sufficient authority to execute the activities necessary to meet the goals of the program.

b. Federally mandated groundwater programs and objectives should provide sufficient federal funding to insure that the program objectives can be achieved and maintained.

c. Federal funding and technical assistance to state and local governments can be very effective in developing and implementing long-term groundwater protection, supply, and recharge programs when the programs have sufficient flexibility to fit the local best solution to groundwater issues.

5. Federal farm programs and other groundwater related legislation can and should provide significant opportunities to improve groundwater management and should incorporate or continue to incorporate the following:

a. The Conservation Reserve Program (CRP) should be enhanced with increased financial incentives to target contracts associated with critical and vulnerable groundwater supplies on lands that have very poor water use efficiency capabilities, in addition to continuing current contract receipts on lands susceptible to soil erosion.

b. The Environmental Quality Incentives Program should allow for the least or buy-out of water rights in state-targeted priority areas to reduce water table declines. Moreover, the program should allow for multi-year contracts to effect program goals.

c. Federal financial support for groundwater should be made available to states through block grant methods rather than exclusively through existing or new federal agencies/entities.

6. Related federal, state and local programs in groundwater monitoring, data collection and analysis should be closely coordinated to provide the most cost effective and productive groundwater management program possible.

Resolution 2005-7 *Settlement of Indian Reserved Water Rights Issues*

To support the settlement of Indian reserved water rights issues by negotiation or agreement, provided that:

1. The settlement is not in violation of existing contracts, state law, federal law, interstate compact or international treaty;

2. Water and power rights of nonparticipants to the settlement are not adversely affected;

3. The settlement does not result in disruption of existing investments and local and regional economies;

4. In the event such settlement causes a diminution or taking of any existing use or right established under state law or as part of a federal water project, the United States shall provide compensation for such diminution or taking; and

5. Congress recognize that economic development of Indian reservations is a national trust responsibility of the United States and, therefore, provide funding necessary for such development rather than attempt to sever reserved water rights from Indian lands which may be to the detriment of the tribes and other existing water users.

Resolution 2005-8 *Federal Nonreserved Water Rights*

To urge that the Administration through the Department of Justice order a review of the Office of Legal Counsel's opinion of June 16, 1982, to conform that opinion to the Interior Department Solicitor's opinion of September 11, 1981, Number M 36914, which declared that the so-called doctrine of federal nonreserved water rights is repugnant to the proper relationship between the states and the federal government in the critical field of water supply and management. The United States should appropriate or purchase water needed for uses of the United States in accordance with state water law of the affected state, except where Congress has specifically established a water right or where Congress has explicitly set aside a federal land area with a reserved water right.

Resolution 2005-9 *Drought Mitigation and Assistance*

To urge Congress and the Administration to pursue a national policy of water development and conservation that will:

1. Provide a water supply infrastructure capable of supporting domestic, agricultural and industrial needs through times of prolonged drought.

2. Provide technical and financial assistance to state and local governments in formulating drought response plans.

3. Ensure that state and local drought planning is regionally and nationally balanced.

4. Examine the merits of extending the benefits of the Reclamation Program to states and/or regions outside the Reclamation West.

5. Provide permanent authority for the Secretary of Interior to take such actions as may be necessary to mitigate the financial impact of droughts on water users, including temporary relief with respect to repayment.

Resolution 2005-10 *Rural Domestic Water Systems*

To urge Congress and the Administration to:

1. Recognize that many small communities and rural areas will not be able to meet all standards set forth in the federal Safe Drinking Water Act (SDWA) without developing new water resources and/or significantly upgrading current systems.

2. Recognize that small communities and rural areas will be unable to meet SDWA standards, even through combining projects, without federal dollars for studies and construction.

3. Assist municipal and rural domestic water systems where local sponsors have determined that regionalization is fiscally and operationally possible and desirable.

Resolution 2005-11 *Wilderness and Roadless Areas*

To urge:

1. That Congress amend the Wilderness Act, the Federal Land Management Policy Act and the Wild and Scenic Rivers Act, as necessary, to ensure that administration of the provisions of these acts will not preclude or restrict access to and the development of water rights and water projects under state law, and the collection of hydro meteorological information necessary to the management of water resources including, but not limited to, research and demonstration projects, and not preclude or restrict the multiple use of federal lands;

2. That Congress and the administration include no lands in a roadless or wilderness classification or close a road or public way without the concurrence of the legislature and governor of the state involved;

3. That those lands found not suitable for wilderness be released;

4. That any Act of Congress designating areas as part of the National Wilderness System provide that no provisions of the Act or any other Act of Congress designating areas as wilderness, nor any guidelines, rules or regulations issued thereunder, shall constitute the establishment of a right to the use or flow of water by the federal government due to the designation as wilderness;

5. That any proposed and/or designated wilderness allow access necessary to build and to subsequently maintain water user facilities located within the wilderness and necessary to place to beneficial use previously decreed water rights;

6. That any water user facility within a wilderness, having been in existence and operation prior to the wilderness designation, be protected with a right of construction completion, operation and repair maintenance or replacement of the facilities necessary to exercise existing water rights in the wilderness areas with modern construction equipment, including but not limited to, mechanized equipment; and,

7. That any renovation and updating request of such facilities automatically include the permit to accomplish the necessary work;

Resolution 2005-12 *Competing Uses at Federal Water Projects and Surcharges*

To urge federal agencies and all other interested parties to participate constructively in reconciling the conflicting demands of original and new project interests under the following guidelines:

1. New Project Purposes and Revision of Existing Purposes

   a. Beneficiaries of authorized project purposes may not be asked to underwrite the addition of new or expanded project purposes that reallocate project benefits.

   b. If project benefits are transferred from one project to another, cost responsibility must be transferred and lost benefits compensated and/or existing repayment obligations adjusted.

   c. Changes in project operation or designation of new project purposes must not be pursued on a generic basis, since only case-by-case authorization can ensure that changes in project operation are warranted, appropriate, cost-effective, and are consistent with national and state objectives.

   d. Changes in project operations or designation of new project purposes may not be made in violation of existing contracts or state water rights granted for or related to the project, or in a manner that will impair contractual rights of project beneficiaries.

2. Cost of Environmental Mitigation

   a. Beneficiaries of vested rights in a project purpose, evidenced by confirmed contracts, shall not be subject to a surcharge, to be imposed as part of that beneficiaries' allocation of operation and maintenance of the

project or otherwise, for the establishment of a natural resources restoration fund or other environmental mitigation or enhancement purposes, that deny said beneficiaries equal protection of the law, are contrary to the contractual rights and obligations of the beneficiaries, result in class discrimination or are not authorized by the laws of the United States.

b. A distinction between environmental mitigation and enhancement is critical in determining the financial responsibility, if any, of existing project beneficiaries to improve environmental conditions at federal multipurpose water projects.

c. All project beneficiaries and the public at large must share financial responsibility for environmental mitigation efforts which encompass those reasonable and cost-effective efforts designed to offset identified environmental impacts resulting from construction of these projects.

d. The direct beneficiaries of enhanced environmental opportunities and the public at large must bear the financial responsibility for environmental enhancement measures which comprise those efforts designed to improve the environment to a state that did not exist prior to construction of the facility.

3. Conservation

a. Conservation plans should be a local prerogative developed at the individual project level with appropriate input from the Bureau. Existing project beneficiaries should continue to pursue appropriate, cost-effective end-use and system efficiency measures.

b. Prior to any reallocation of unallocated stored project water for consumptive use, existing project beneficiaries believe that the intended beneficiary should be required to make positive showing that the water is needed after the implementation of appropriate, cost-effective end-use water management practices.

c. There should be no attempt to reallocate water resources away from identified project purposes and traditional project beneficial uses of irrigation, municipal and industrial water supply and power generation to new instream uses, such as recreation or environmental enhancement, through the imposition of conservation plans or practices. Any transfer of conserved water must be accomplished under state water law practices.

4. Operating Criteria

The Secretary of Interior and the Secretary of the Army shall fully comply with all applicable legislation, federal regulations, contractual commitments, and water appropriation laws of the state before changing the operating criteria for any federal reservoir, either permanently or as an interim measure, and only upon completion of a NEPA process.

Resolution 2005-13 *Federal Policy on Non-Agricultural Transfers of Water in Reclamation Projects*

To oppose any federal policies on non-agricultural transfers of water at reclamation projects that:

1. improperly assert control over water rights in Reclamation projects;

2. impose barriers to efficient water transfer to new uses;

3. usurp state water law;

4. impose fees on transfers of waters of a project by the beneficial owners of said water; or

5. impact the irrigation exemption under the Fair Labor Standards Act.

Resolution 2005-14 *Federal Policy on Water Spreading*

To urge the Administration, in the adoption of a policy or rules to identify and remediate the unauthorized use of federally developed project facilities or water supplies for irrigation, to adhere to the longstanding principles relating to federal water projects, to-wit:

1. That the use of federal reclamation facilities and water supplies are controlled by the authorizing act as adopted by Congress and the laws of the state under which the water was appropriated for said project.

2. That a federally developed water supply may be used only for those purposes described in the act authorizing the project and the water right granted to the project by the state in which the project is located.

3. That irrigation project beneficiaries have a right to recapture and reuse waters of a reclamation project.

4. That the United States, in the construction and operation of a reclamation project, becomes the storer and/or carrier of project water and the water rights become the property of the project beneficiaries.

5. That land classifications within a reclamation project were made for the purposes of determining the overall capabilities of the project and the repayment ability of the lands, and not for the purposes of limiting the lands developed by irrigation. For paid out districts there is no reason for the application of land classification for any purpose.

6. That water appropriated by the United States for a reclamation project for irrigation is to be used to provide a water supply or a supplemental water supply for the irrigation of lands, and surplus water may be used for other purposes only with the consent of the entity that has contracted with the Bureau of Reclamation for repayment of the construction costs of the project.

7. That so long as project water is being used in a manner that is consistent with the water right for the project and does not injure the right of project beneficiaries, repayment ability and obligation should be the only issues reviewed by the Bureau of Reclamation.

8. That remediation of unauthorized use of federally developed project facilities or water supplies should be uniformly applied and should not be instituted as a part of a plan for the reallocation of project water for non-project purposes.

9. That the right to the use of water acquired under the provisions of the Reclamation Act shall be appurtenant to the lands irrigated.

10. That beneficial use of water acquired under the provisions of the Reclamation Act shall be the basis, the measure, and the limit of the right. That nothing in the Reclamation Act authorizes the interference with the laws of any state or territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder.

11. That temporarily unproductive lands are entitled to receive water for irrigation purposes from a reclamation project.

12. Upon the Bureau of Reclamation entering into repayment or water service contracts, the lands of the reclamation project become the lands within or under the jurisdiction of the contracting entities without regard to a classification of said lands.

Resolution 2005-15 *Adjudication of Federal Claims*

To urge:

1. Each state and the water users to establish procedures as they deem appropriate to adjudicate water rights in such a manner as to take full advantage of the 43 U.S.C.

S 666 (McCarran Amendment) by making the United States a party to such suits so that the United States will be required to define, identify and quantify all of its claims to water within such state, including those made on behalf of Indians.

2. The states or water users to conduct such litigation or propose and enact such legislation as they deem appropriate so as to require the United States, if reserved rights do exist in any given circumstance, to assert any claim to water, regardless of the legal basis of such a claim, to meet the following criteria:

   a. A specific time within which claims shall be defined, identified and quantified;

   b. A requirement for definition of the location, amount, purpose and priority;

   c. A limitation on any claims to the authorized purpose or purposes of the appropriation or reservation;

   d. A provision for certainty and finality of any adjudication which will prevent expansion of any claim or new claims after completion of the adjudication; and

   e. A provision that such claims can only be satisfied with the waters from which the quantified reserved right accrues.

3. The Department of Justice take all appropriate steps consistent with long-standing federal policy of deference to pending state adjudications, to dismiss or remove the federal proceedings involving claims to water or a water right and participate in the state general adjudication.

4. That Congress enact legislation which provides for full compensation to owners of vested water rights or rights to water acquired under state law prior to such identification, quantification and adjudication if such rights are taken, impaired or damaged by establishment of United States rights, and the United States be required to pay its proportionate fees in any river system adjudication.

5. That the Department of Justice cease the filing of "Quiet Title" actions in federal court as a means of adjudicating a federal claim to water rights and that it give deference to pending state court general adjudications.

Resolution 2005-17 *Instream Flows - Federal Agencies*

1. The Administration shall recognize the constitutional authority of each state to allocate quantities of water within its jurisdiction and the policy of Congress against superseding, abrogating or impairing rights to quantities of water granted by the respective states for beneficial uses.

2. Federal agencies shall not through the use of water quality, land management, navigation, endangered species or other laws impose conditions or restrictions for the purpose of indirectly or directly establishing and maintaining instream flows, bypass flows or releases contrary to and in disregard of the appropriation of water under the laws of a respective state or that adversely affect allocations of water among states pursuant to interstate compacts, treaties or decrees of the United States Supreme Court, or that impair, injure or abrogate vested contractual rights to the use of water of a state.

3. No federal agency action shall indirectly or directly impair or prohibit the diversion, transportation, storage, exchange or release of water duly appropriated.

Resolution 2005-18 *Essential Fish Habitat*

To urge that: (1) the National Oceanic & Atmospheric Agency (NOAA) modify its proposed rule on essential fish habitat, to eliminate any intrusion upon, or interference with non-fishing activities including allocation and management of water resources by the States or pursuant to interstate compacts or U.S. Supreme Court decrees; and (2) Congress enact amendments to the Magnuson Fishery Act expressly limiting NOAA's jurisdiction under the Act.

Resolution 2005-19 *Funding for U.S. Department of Agriculture's Environmental Quality Incentives Program*

To urge that Congress provide funding in support of the U.S. Department of Agriculture's Environmental Quality Incentives Program, so that one or more land management practices, including salinity control, nutrient, pest, and/or grazing land management can be implemented by farmers and ranchers to address soil, water, and related natural resource concerns on their lands in an environmentally beneficial, cost-effective and shared manner.

Resolution 2005-20 *Infrastructure Security Costs*

To urge Congress to protect critical water and power infrastructure as a national obligation by providing that increased costs associated with ensuring security of project facilities and delivery systems in the aftermath of the events of September 11, 2001 be funded through federal appropriations and, in the case of federal multi-purpose facilities and delivery systems, be treated as non-reimbursable.

Resolution 2005-21 *Administration of Pre-FLPMA Rights-of-Way for Water Facilities*

To urge:

1. That the Secretary of Agriculture and the Secretary of Interior continue to adopt and follow federal policies that, notwithstanding the provisions of the Federal Land and Policy Management Act (FLPMA) of 1976 that requires that each right-of-way over federal lands issued under FLPMA contain conditions that would minimize damage to fish and wildlife habitat and otherwise protect the environment, do not require such conditions be imposed on the operation and normal maintenance of rights-of-way used for diversions of water that were authorized under the Act of 1866 unless activities after 1976 significantly alter the alignment or relocate the existing facility or result in substantial deviation of authorized use.

2. That the Secretary of Agriculture and the Secretary of Interior continue to adopt and enforce policies which prohibit the imposition of conditions on rights-of-way arising under the Act of 1866 which may prohibit the diversion of water under a duly issued state water right without a determination that there is a substantial deviation in either location or authorized use of said right-of-way.

3. That the Secretary of Agriculture and the Secretary of Interior defend before the courts with appropriate jurisdiction and the Congress of the United States the federal policy that the refusal to impose conditions on rights-of-way used for water diversions and arising under the Act of 1866 does not constitute agency "action" under Section 7(a)(2) of the Endangered Species Act (ESA) and the intent of Congress is clear that under ESA, "action" does not include a decision by an agency not to exercise its discretion, especially when the "action" does not protect the public interest and the lands upon which the right-of-way is located, but imposes conditions which limit or completely curtail the exercise of a water right received from a state to divert and use waters of that state for a beneficial use.

4. That the Congress of the United States amend FLPMA to the extent it is necessary to clarify the intent of Congress that no conditions may be imposed upon rights-of-way acquired under the Act of 1866 for federal lands that have the sole purpose of controlling the diversion and application to beneficial use of water under a state-issued water right under which the right-of-way across federal lands was necessary to facilitate the diversion and application to beneficial use of the appropriated water.

Resolution 2005-22 *Liability for MTBE and Perchlorate Contamination*

To urge Congress to reject all requests for legislation that would grant the manufacturers and/or users of MTBE and/or perchlorate with a full or partial waiver of liability or

immunity that would in any way reduce or eliminate their responsibility for addressing the impacts associated with such chemicals.

POSITION STATEMENTS
2006 POSITION STATEMENTS

Position Statement
Resolution 2006-1 *Clean Water Act Reauthorization*

The Clean Water Act's purpose should remain the regulation of the water quality impacts of point and nonpoint discharges of pollutants upon classified uses of water through the setting of water quality standards and effluent limitations to protect classified uses. Though the regulation of pollutants benefits classified uses of water by protecting water quality needed for such uses, the Clean Water Act should not be expanded, construed or applied to create a national recreational, cultural, historical, ecological, habitat, aesthetic, instream flow, or land use law or program, or otherwise be utilized to regulate anything other than discharges by point and nonpoint sources of pollutants to waters of the United States.

In any reauthorization of the Clean Water Act, the following principles should be embraced:

The Clean Water Act and any amendments thereto shall not directly or indirectly create a federal water quality law or program which supersedes, abrogates, or impairs state water allocation systems and rights to water created and managed thereunder.

Water allocation is to be accomplished by established principles of law. This means that the States have the primary responsibility and the prerogative of allocating, determining, and administering rights to quantities of water. Under the provisions of the McCarran Amendment, water rights asserted by federal agencies and Indian tribes must be claimed in the appropriate state water forum when the United States is properly joined. No water rights arise in the United States or any other person by virtue of the Clean Water Act.

No provision or program of the Clean Water Act shall be construed or applied to require or restrict any state in the choice of its water law, or the judicial or administrative principles for making water allocations (whether riparian, reasonable use, prior appropriation, public trust, a combination of the foregoing or any other system of allocation chosen by a state).

With growing frequency, the Clean Water Act is being used as a vehicle to thwart the siting and construction of storage reservoirs, hydroelectric facilities, and other water based activities associated with irrigation and drainage. As cited below, the Clean Water Act needs amendment to clean-up its intent to permit these water dependent activities.

14. 1. Local Responsibilities - It is particularly important that Congress and the Administration recognize that section 404 of the Clean Water Act frequently affects local matters that are best determined by state and local governments; and that decisions by such governments on those matters should be controlling unless significant issues of overriding national interest are involved. The Corps of Engineers should accept local responsibility and respect state water rights.

2. Decision Authority - The decision-making authority for issuing section 404 permits should logically reside within the permitting agency, the Corps of Engineers. The decision process should carefully limit delay of important water resource projects by consulting agencies through the interagency review process. When the permitting agency has sufficient information on which to base a decision, it must be free to make its decision; free of any administrative veto by other federal agencies whose proper role is consultative. In this regard, the Executive Branch should make clear to the Administrator of EPA that the section 404(b)(1) guidelines that he is required to develop shall not have the force of regulatory criteria, but shall be advisory guidance to the Secretary of the Army in carrying out his statutory duty to administer the section 404 permit program.

3. General Permits - The section 404 permit program has resulted in needless delay and expense to state, regional and local agencies in the development of vital water resource projects at a time when the federal government is urging the states and their political subdivisions to undertake greater responsibility for meeting the needs of their citizens. Both legislative and regulatory actions are needed to remedy this situation.

In the legislative area, action is needed to provide for meaningful transfer of authority to the individual states through the issuance of state general permits, rather than "puppet" transfers which merely add to the burden on state regulatory agencies, resulting in unnecessary duplication and delay in the permit process.

The Corps should adopt simplified procedures for issuing general and nationwide permits and for transferring 404 permit authority to states; exclude categories of water such as headwaters, isolated waters and intrastate waters; substitute a five year review period for nationwide permits; and reduce review processes with other Federal and state programs.

15. 4. State Water Law - In accordance with the expressed intent of Congress, under no circumstance should the section 404 permit process be used by any federal agency to override the primacy of states in matters regarding the allocation of water quantities within their respective jurisdiction. An amendment to section 404 is needed to clearly provide that neither the Corps nor EPA have authority to prevent or restrict consumptive use of water or water depletions authorized under state law.

5. Guidelines - The EPA and Fish and Wildlife Service must establish guidelines which provide objective mitigation criteria; allow premitigation; and defer to the Corps in matters of engineering, economics, and other technical areas within their expertise.

6. The federal agencies should produce, at the conclusion of the initial scoping process, a single, project-specific list of the criteria that will be applied to the project's permit evaluation. The criteria should be clearly related to relevant federal statutory authorization and sufficiently specific for state or local governments to make responsive decisions regarding alternatives, mitigation and modifications. State and local governments should be able to rely on the fact that these criteria, once established at the scoping phase, will not change except as required by law or modification of the project application.

7. Memorandum of Agreement - The February 7, 1990 Memorandum of Agreement on mitigation between the Corps and EPA is not official policy and should be rescinded until proper public lawmaking processes are followed. The same is true of the Corps Wetlands Delineation Manual. Analysis of practicable alternatives should allow credit for mitigation in determination of the "least environmentally damaging alternative."

8. Artificial Water Areas - Limit section 404 jurisdiction so that it does not apply to water surfaces created artificially incidental to irrigation, hydropower, and water supply projects. Experience with this issue has resulted in some ridiculous examples where the effort to conserve water by lining canals has been impaired by wetlands created by the seepage. Strict and inflexible interpretation of artificial water areas is also an impairment to relicensing hydroelectric projects to conserve additional renewable energy resources.

9. Documentation - Require EPA to document its concern and recommendations to the Corps as part of the permanent process after thorough analysis of project impacts. The Corps would then have to consider EPA's formal statement in a manner similar to a biological opinion rendered by the Fish and Wildlife Service under Section 7 of the Endangered Species Act.

Milestone federal decisions, either by a permitting agency or cooperating agency, should be accompanied by specific written findings with regard to each of the criteria which it must apply by law, stating specifically the decision and the basis for that decision.

10. Continuing Cooperation - The federal government must speak with one voice. Internal inconsistencies as to federal agency policies, definitions, standards and positions should be resolved and eliminated. In any case where the project, as proposed, does not or is unlikely to receive a federal permit, the federal agencies should identify alternatives which are more likely to be permittable. Such

alternatives should be reasonably cost effective and should accomplish the purpose identified by the states of local governments.

11. Reuse of Reclaimed Water - The CWA should be amended to modify water quality requirements for the discharge of reclaimed water to ephemeral and/or effluent dominated streams in order to encourage water reuse. The CWA should be amended to exempt from application manmade waterways that discharge de minimis flows of reclaimed water and remediated groundwater to waters of the United States.

Section 304 of the CWA requires EPA to develop and publish water quality criteria that will provide for the protection of various designated uses. These criteria are contained in a document entitled "Quality Criteria for Water" (U.S., EPA, Office of Water Regulations and Standards, May 1, 1986) also known as the "Gold Book." Incorporation of Gold Book criteria in state standards for all water bodies is inappropriate for many situations. In particular, in arid areas where it is critical to maximize the reuse of water, strict water quality criteria are inappropriate for the discharge of reclaimed water to ephemeral streams and creation of reclaimed water dominated streams to recharge aquifers. The Eastern Municipal Water District of Riverside County California produces tertiary treated water. The most beneficial use of this water is to discharge it into the Santa Margarita River where it will ultimately become part of the water supply of Camp Pendleton and the Fallbrook Public Utility District in San Diego County. This procedure has been approved by the health agencies and the state water resources control board. EPA Region IX has overruled the local agencies.

12. Water Conservation and Water Use Efficiency - Section 218 requires consideration of water conservation and water use efficiency measures. These should be addressed separately from the Clean Water Act so that they are not tied to permit or grant and loan programs with the purpose of eliminating pollution discharges. Also see Resolution 95-10.

13. Indian Tribes - In Section 518 the CWA currently provides that qualified tribes may be treated as states for certain specified sections of the Act, including water quality standards, wetlands regulation, and 401certification. Some have argued this constitutes a delegation of federal power to tribes and that, in any event, under this provision tribal governmental authority extends to nonmember activity on nonmember owned lands. Congress should clarify that this is not a delegation of federal power and it should authorize the implementation and enforcement of CWA programs by tribal governments only with respect to tribal members and tribal lands.

18. 14. The Ninth Circuit Court of Appeals decision in United States v. Weitzenhoff has held that criminal liability may attach for the unintentional violation of the CWA including unintentional violations of a CWA permit. The

CWA should be amended to use the traditional criminal liability standard where specific intent is an element of criminal violations.

Position Statement

Resolution 2006-2 *Implementation of the Clean Water Act*

State Water Rights - State and local allocation of the use of the waters of the streams of the several western states has provided a critical element in the development of the health and welfare of those areas. Accordingly, Congress has consistently deferred to state water rights jurisdiction wherever possible. However, some federal courts have interpreted the provision of the Clean Water Act, section 101(g), very narrowly. Accordingly, Congress should reaffirm that section 101(g) should not be construed or used to supersede or abrogate rights to quantities of water established by any state; and in particular that section 101(g) applies to section 404 and 510(2). Further, the water quality provisions of section 303 were established to protect water rights allocated by the states for beneficial consumptive use, and that section should not be construed to impair those rights in any way.

POTW Compliance - EPA and participating states are imposing increasingly restrictive effluent limitations for municipal wastewater discharges based upon more restrictive water quality standards. The adoption of new and more stringent water quality standards will result in existing permits being revised to require immediate compliance with the more stringent effluent limitations. While a compliance schedule provides some relief to the discharger, the effluent limit must be met regardless of public costs of actual benefits to the downstream uses. Accordingly, EPA needs authority to allow municipalities operating POTWs a reasonable period to achieve compliance with those new permit conditions, including time for development of new cost-effective technology.

Instream Uses - Water quality standards necessary to protect instream uses can require stringent effluent limitations for wastewater dischargers who discharge greater flows than are normally in the stream itself or who discharge to streams having naturally high metals concentrations. Such effluent limitations are to be achieved regardless of cost to publicly owned wastewater treatment works and regardless how small the benefit. Section 302 of the Act provides an opportunity to evaluate the benefits and costs of effluent limitations necessary to protect instream uses. However, EPA has interpreted section 302 as not applying to state-issued permits that implement water quality standards pursuant to section 301(b)(1)(C). Section 302 was amended in 1987 to apply only to NPDES permits issued to industrial dischargers. Section 302 should be amended to apply to publicly owned wastewater treatment permits and to be usable by delegate states. Such an amendment should be consistent with the congressional policy that no federal funds be used for advanced waste treatment facility construction where no substantial benefit to stream quality will occur.

Indian Tribes - As part of its implementation of the Clean Water Act's 1987 addition of section 518, EPA has created four work groups for the purpose of developing regulations on how Indian tribes will be treated as states under sections 104, 106, 201 to 219, 303, 305, 314, 319, 401 and 404 of the Act. Section 518 allows qualified Indian tribes to, among other things, establish water quality standards, issue NPDES permits, dredge and fill permits, and pursue enforcement activities. The issues related to these responsibilities, and their relationships to state water quality programs and Indian jurisdiction in general, are extremely complex.

Clean Water Act section 518(3) directs the Administrator, in promulgating regulations which specify how Indian tribes shall be treated as states, to "consult affected states sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by states and Indian tribes located on common bodies of water."

All issues related to Indian jurisdiction are of vital interest and concern to western states, where many tribes share common water bodies with those states. When that jurisdiction impacts the management and protection of critical water resources, the concern is even greater. Because of this concern, NWRA requests that in accordance with section 518(e) of the Clean Water Act, EPA take the steps necessary to consult all states affected by the inclusion of Indian tribes as states within the Act.

Nonpoint Source Program - Section 319 outlines a program for control of nonpoint sources of pollution. Water users may be greatly affected by the promulgation of nonpoint source control regulations. Certain federal agencies such as the Bureau of Reclamation and Soil Conservation Service have extensive knowledge and expertise with agricultural practices and state water laws and should be involved with this process. Local governmental agencies such as water conservation districts, conservancy districts, and municipalities can also greatly assist in the careful consideration of the many issues that are involved with nonpoint source control measures if applied to agriculture. EPA and the states should approach the section 319 program with an orientation designed to fully involve and respect the role of agriculture and other water users in meeting the need for food and fiber and public drinking water supplies in the nation's and the world's economy. Nonpoint source controls, if adopted, should stress reasonable, cost effective measures which don't interfere with the exercise of water rights and are demonstrably necessary to protect against injury to the beneficial uses of water supplies.

Adequate funding of the nonpoint source program is particularly important. Federal mandates to the states without financial support impair the effectiveness of a uniform national program. In particular, the Clean Water Act Amendments of 1987 require a new focus on nonpoint sources but without financial support. States are to create and implement individual control strategies for categories of nonpoint sources. Yet, abandoned mine drainage is a major nonpoint source category where control is not feasible because no person or entity remains financially responsible for the pollution. Federal aid combined with state programs should be encouraged. Not only federal funding support for nonpoint source control implementation, but also federal funding for

all other federally required actions being implemented by the states should be maintained and improved.

National Estuarine Program - The National Estuary Program, added as section 320 of the Clean Water Act by the 1987 Amendments, establishes a management conference process for developing and implementing conservation and management plans to protect estuarine resources. In structuring and administering that process, EPA and other participating federal agencies have, at times, tended to overlook resulting impacts of that Program on public water supplies diverted from streams upstream of the estuary. However, section 102(a) of the Act specifically recognizes that one of the Act's key purposes is to protect public water supplies. In light of increasing pressure on public water supplies, it is essential that EPA and other federal agencies developing National Estuary Program implementation plans fully recognize the need to protect public water supplies developed from streams flowing into the estuary as well as other resources; and allow state, local and regional agencies that rely on those public water supplies to participate fully in developing those plans.

Nationwide Permits - The Secretary should renew each of the existing nationwide permits and should promulgate others which cover general categories of construction activities which are performed nationwide and which either cumulatively or individually will not have significant impact on the environment. This would allow the Corps to monitor even more standard projects with its existing staff and trained individuals. If the United States is to remain competitive in world markets, we must all do what we can to improve the efficiency of the system and this is one step towards that end.

Wastewater Contracts - In implementing the federal Clean Water Act provisions for funding wastewater treatment projects constructed by local water agencies, EPA has imposed serious hardships on those agencies by changing federal design criteria and funding allocations, and thus, federal contractual obligations, after completion of those facilities. This resolution urges EPA to discontinue that practice in order to protect the financial stability of local agencies that have constructed wastewater treatment projects under EPA Clean Water Act contracts.

Under EPA regulations, audits are performed to ensure the project constructed is in accordance with the plans and specifications, and are necessary to discover (1) discrepancies in the project elements that are constructed, (2) whether the project is being used as intended, and (3) whether the project has been constructed under conditions of fraud or corrupt practices. If any of these items is discovered, the grant may and should be annulled in accordance with regulations of the Act (CWA Construction Grants Manual Section 30.920-5, Annulment of Grant).

EPA's audit practice, however, has been to reevaluate the design criteria many years after the project was conceived and to apply hindsight to determine whether the design criteria are consistent with present day practices. The result is to reduce the eligibility of project capacity based on this new information not available at the time of project conception and

to disallow, retroactively, the use of EPA grant funds, sometimes in the range of millions of dollars.

Section 203(a) of the amended Clean Water Act clearly expresses the congressional intent that eligibility determinations, once made, are not to be later modified unless found to have been made in violation of applicable federal statutes and regulations.

This resolution is in furtherance of paragraph B(8) of NWRA Statement of Objectives, supporting action which would result in uniform project development standards applicable to all federal water development agencies.

Protection of Wetlands and Municipal Supply - Currently, section 404 of the CWA outlines procedures for issuing permits for the discharge of dredged or fill material into navigable water of the Nation. The Secretary of the Army is charged with administering a regulatory program pursuant to section 404. The Administrator of EPA has oversight of the Secretary's regulatory program and has authority to prohibit the discharge of such material to a defined area when it is determined that the discharge will adversely impact municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. Steps for regulations are measures to direct positive

steps for water resources managers and measures to integrate protection of wetlands with safe drinking water.

a. Section 404(a) should be amended to encourage early and full evaluation of water supply reservoir alternatives in a joint process between a permit applicant and the Army Corps of Engineers. Currently, the Corps requires submittal of a very detailed application outlining the proposed project in order to initiate the federal regulatory process. Because the federal process for water supply reservoirs commonly requires preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act, the alternatives issue is then reopened after the applicant may have already undergone a state review of alternatives.

b. Currently, EPA and the Corps publish Memoranda of Agreement (MOA) to set out significant policies dealing with definition and delineation of jurisdictional wetlands and with wetlands mitigation. This MOA process has been a closed one that has not included Federal Register publication of draft policy statements subject to public review and comment. Section 404 should be amended to provide for development of policies in a public forum for prioritizing of wetland resources, for development of mitigation banks, and for integration with drinking water requirements which will help to direct water supply managers in their planning for new supplies.

c. The CWA exempts a variety of activities including emergency repair of existing water supply facilities, but does not allow for construction of water supply projects under extreme emergency situations. Section 404(f)

should be amended to allow construction of emergency municipal water supply projects to meet minimum water supply needs for the protection of public health in response to drought, natural disaster or other emergency situations.

Position Statement
Resolution 2006-3 *Dam Removal*

NWRA strongly opposes the removal of dams in the West. Specifically, NWRA opposes the removal of dams in the West. Specifically, NWRA opposes the removal of Lower Granite, Little Goose, Lower Monumental and Ice Harbor on the Snake River and Glen Canyon on the Colorado River.

Economic studies are being conducted to assist northwest regional policymakers in deciding whether to ask Congress to bypass and/or breach the following lower Snake River dams for potential salmonid benefits: Lower Granite, Little Goose, Lower Monumental and Ice Harbor. Some of the annual costs of mothballing the four dams are:

1. Loss of 11 billion kilowatts;

2. Added O & M costs of $2.1 million to provide agricultural water to 37,000 acres currently receiving water from Ice Harbor pool;

3. Loss of $59 million in recreational benefits;

4. Increase of $33 million shipping costs due to lost barge navigation in the lower Snake River to Lewiston, Idaho;

5. Continued annual $29 million debt service obligation on existing dams.

Position Statement
Resolution 2006-4 *USGS Cooperative Streamgauging Program Funding*

The United States Geological Survey (USGS) has provided a Cooperative Water Program (CWP) and National Streamflow Information Program (NSIP) which have been instrumental in providing streamflow data to federal, state, tribal, and local government agencies, as well as private entities and individuals, to forecast flooding and drought and to project future water supplies for agricultural, municipal, industrial, hydropower, recreation and environmental uses and purposes, including water supplies for fish and wildlife management and needs of endangered species. While these vital programs benefit many, they have been allowed to erode to the point that it threatens the quantity and quality of basic data provided to a myriad, growing and diffuse number of decision makers and stakeholders, with significantly adverse consequences. Without timely and accurate information, human life, health, welfare, property, and environmental and

natural resources are at considerable risk of loss. Years of neglect and a slow erosion in federal funding, with flat or nearly flat appropriations in the face of continually rising costs, threaten the availability of critical data regarding streamflows, which is the basis for essential public and private decisions. With continuing drought in many areas, and other areas experiencing devastating floods or facing potential floods, timely and accurate information for sound water resources management has never been more important.

The President's FY2006 request of $63,770,000 for the Cooperative Water Program, although slightly higher than previous years' appropriation, is still not sufficient to reverse the continuing decline in these programs. For a number of years, federal appropriations have not kept up with increasing program costs, nor matching non-federal contributions. The Cooperative Water Program, a federal/non-federal streamgauging partnership, was once funded by 50% matching grants, but now roughly two-thirds of the money comes from non-USGS sources. A $70.4 million appropriation would have been needed for FY2005 in order to restore real program purchasing power to its FY2003 level, taking into account mandatory federal pay raises, rent increases and new information security requirements, but was only $63,262,000. Similarly, an appropriation of $15.5 million would have been needed in FY2005 to restore NSIP spending to its FY2003 level. Another $100 million is needed to reactivate and add streamgauges and upgrade the system.

It further appears that cost-share support from state and local governments has also been declining, causing the USGS to either abandon streamgauges or requiring local entities, usually irrigation water user organizations, to fill in the gaps caused by the lack of financial support from the state and local governments.

These services are essential to the well-being of the nation in managing the water resources of the states.

Position Statement

Resolution 2006-5 *Irrigation District Contract Claims Against the BOR.*

The decision in Orff et al. v. United States decided June 23, 2005 has led to an unintended consequence for irrigation districts contracting with the United States under Reclamation Law. The decision misconstrues the intent of Congress in how 43 U.S.C. 390uu is interpreted. Prior to this decision, Section 390 had been considered a waiver of immunity against the United States in actions over contracts between irrigation districts and the Bureau of Reclamation. The decision casts doubt on numerous pending lawsuits across the West involving the use of Section 390uu and could lead to their dismissal. The Orff decision would make it extremely difficult for contractors with the United States to bring suit in contract disputes with the United States under Reclamation law.

Position Statement

Resolution 2006-6 *Reauthorization of the Endangered Species Act*

In 1973, the United States Congress passed into law the Endangered Species Act (ESA) of 1973 (87 State. 884). This was in direct response to concern over the endangerment of a variety of the larger mammals of the world, an important natural resource deserving of man's admiration and protection. Protected species included the African elephant, the timber wolf, and the grizzly bear.

The species are listed solely on biological considerations. However, once listed, the federal government usually assumes no responsibility for the recovery of the species, with few exceptions. Recovery plans are produced for some species. The recovery plans often are no more than vague lists of actions that might be taken to recover the species. No mechanism for implementation is provided, no consideration of the institutional needs to implement the plan is given, no costs are provided, and no consideration of other applicable laws is included.

The act should be amended to require that the appropriate federal agency provide detailed recovery plans at the time the species are listed. The recovery plan should identify: 1) the specific activities that will have to be taken to recover the species, 2) the cost and time frame for recovery, 3) the probability of recovery if the actions are taken, 4) the types of development activities that will be subject to section 7 consultation if the species is listed, 5) the locations of activities that will be subject to section 7 consultation, and 6) the potential economic impacts of listing the species.

Responsible artificial propagation efforts could be an effective means to avoid water flow requirements which would interfere with water development. Congress should encourage use of artificial propagation as a means of species recovery.

Where water is found to be necessary to the recovery of listed species, the target flows should not be maintained through conditions imposed on federal permits and regulatory approvals, but rather through the federal government acquiring water rights as provided for in section 5 of the ESA and in an appropriate manner in accordance with methods outlined by the United States Supreme Court in California v. United States, 438 U.S. 645 (1978).

The amendments to the law adopted by Congress in 1978 were to render the law more workable for the original purposes intended and to achieve a balance in the application thereof; however, the law as administered and applied is still a means to preclude or impede resources development. It will continue to be so abused unless and until amended by Congress and reasonably interpreted by the Executive Branch. FWS should be instructed immediately that Solicitor Coldiron's opinion of September 11, 1981, holding that federal non-reserved water rights do not exist, means that the United States must proceed under section 5 of the ESA to acquire water within state law systems if it wishes to provide water for purposes under the Endangered Species Act.

Insufficient data, scientific analysis, or even organization of the data has often characterized decisions by federal agencies concerning designation of species as endangered, identification of critical habitat, or impact of proposed projects upon the species or habitat area. Worthwhile projects have been significantly delayed, made more costly, or entirely prohibited; yet subsequent examination of the data and rationale for government agency decisions has found insufficient basis for the decision. Recent experiences with the snail darter, the squawfish, the whooping crane and the least tern illustrate the need for better data base development and decision making. Compliance with the National Environmental Policy Act must occur prior to the listing of a threatened or endangered species, approving a recovery plan, or declaring a critical habitat.

Decisions concerning designation of a species as endangered, a habitat as critical or that a project will likely adversely impact survival of the species must be firmly proven and based on reasonable data and scientific evidence. They should include an evaluation of the present and foreseeable sociological and economic impacts caused by such decisions. Such data and decisions should be documented in a detailed decision document with the evidence collected, analyzed and decision justified.

For example, the recent proposal by Fish and Wildlife Service to designate almost the entire Colorado River corridor as critical habitat for four endangered fish illustrates the need for additional control over this process. The proposed designation was made with very little scientific basis and a complete lack of economic analysis. Commentators at the initial public meetings pointed out the severe economic impacts of the designation as well as the lack of scientific support for the notion that such a designation is vital to recovery of the fish.

The act should be amended to permit the Fish and Wildlife Service and the National Marine Fisheries Service to approve conservation plans for species in advance of listing and commit to issue a permit upon any subsequent listing. Such an amendment will provide incentives for conservation measures to be implemented in advance of listing and indeed, provide opportunities to avoid a species listing. Modification to such plan would require permittees consent.

Currently, several public utilities and public agencies in San Diego County are studying extensive areas to be acquired for multi-species habitat conservation. The study is being coordinated with the state and U.S. Fish and Wildlife Service, which are in accord. The agencies which are to fund this multi-million dollar program cannot justify spending their customers funds without a guarantee that this advance mitigation would permit taking an endangered plant or animal that might be encountered in a construction project. The state can give such guarantee, but USFW cannot legally do so without a change in the Act, even when USFW is in full accord with the program.

Complex endangered species situations such as the Sacramento/San Joaquin Bay Delta and Colorado River require an ecosystems approach. Individual species protections are piecemeal. Protections can be inadequate while economic costs of listing conservation and recovery are high.

Position Statement

Resolution 2006-7 *Implementation of the Endangered Species Act*

The implementation of the Endangered Species Act (ESA) should not be used as a devise to erode states rights under the law to allocate its water resources or to support decisions regarding the reallocation of vested water rights including stored water. The implementation of the ESA must recognize and comply with state law, except to the extent explicitly precluded by federal law.

In addition, in their implementation of the ESA, the administering federal agencies must take into account the requirements of other applicable federal law such as NEPA and Reclamation law.

If the agencies administering the ESA determine that additional water is necessary for the protection or recovery of a species, the water for such purposes should be acquired through the respective state's water rights system, rather than through the implementation of terms and conditions on the operation of federal or state water supply projects or through federal permits or regulation. In instances where lawful water reallocation would result in economic hardship, the injured parties should be compensated prior to the reallocation and the resulting injury.

Decisions implementing the ESA which have significant local, state, regional and national impacts are, as a practical matter, currently being made at the lowest levels within the agencies responsible for administering the ESA. Decisions to list a species, designate a critical habitat or adoption of a recovery plan should be made by those with ultimate responsibility for the decision, after appropriate consultation with those involved in the decision-making process such as the regional director(s) of the affected agency(ies), as well as the governor(s) of the affected state(s) and the congressional delegation(s) from the impacted area(s).

Position Statement

Resolution 2006-8 *FERC Licensing Procedures for Hydroelectric Development*

Hydroelectric power is an efficient, cost-effective, renewable and clean energy generation source that accounts for approximately 12% of the nation’s energy supply. With over half of the nation’s non-federal hydroelectric capacity scheduled to be relicensed in the next 15 years, the Federal relicensing process needs significant legislative and regulatory reform to protect and enhance the viability of these and future projects.

Hydropower is the Nation’s most abundant renewable energy resource, critical to the economies of the West. It provides important ancillary public benefits to irrigation, water supply, recreation, flood control, and fish and wildlife habitat.

More than half of all non-Federal hydro projects, approximately 30,000 megawatts, will go through the FERC-administered relicensing process over the next 15 years. Most of the power at stake is located in the West. The hydroelectric licensing process does not produce optimal decisions because the participating federal agencies fail to consider the full effects of mandatory and recommended license conditions. It is also inefficient, costly and time-consuming, when environmental reviews are not coordinated. As a result the process is burdensome for all participants, and often leads to litigation.

During the past decade, projects coming out of the hydroelectric relicensing process have experienced a power capacity loss, on average, of about 8 percent. As this trend continues, the electricity required to replace this loss may contribute to other issues of concern such as air quality.

Federal regulatory agencies' responsibilities in the relicensing process directly affect how that licensed resource will operate in cooperation with other respective state resource needs, consumer energy costs, recreational opportunities and access. Many Federal agencies have the authority to mandate conditions as part of hydropower license that do not consider the effects of those conditions on the economics of the project or its overall multi-use purposes, such as recreation and clean air attributes.

Federal legislation is needed to amend the Federal Power Act to require federal resource agencies to consider the overall impacts of their proposed conditions and allow the Federal Energy Regulatory Commission to relicense these valuable projects in a timely, efficient, and economic manner.

It has become apparent that FERC has on numerous occasions relicensed hydroelectric projects or modified existing licenses without ensuring that each license or amended license contains conditions as are necessary to ensure that the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for other beneficial public uses. This is particularly true in regard to conditions in licenses that have in the past been necessary to ensure the ultimate development of a waterway for irrigation of arid lands. At the same time, FERC has taken the position that 16 U.S.C. 821, which provides that nothing in the Federal Power Act shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective states relating to the control, appropriation, use or distribution of water used in irrigation, does not limit the jurisdiction of FERC in issuing licenses that create a water right, notwithstanding the applicable laws of the respective states. It is absolutely necessary to ensure the orderly development of the water resources of the respective states that FERC adopt procedures by which the Department of the Interior, Bureau of Reclamation and the appropriate state water agency in each state be given full opportunity to place conditions on any license issued by FERC to insure that the license does not interfere with the comprehensive plan for development of the waterway, as determined by the state. The control of the flows in the waterways of the respective states by FERC licenses was neither anticipated nor contemplated by the Congress in adopting the Federal Power Act.

Position Statement

Resolution 2006-9 *Warren Act Amendments*

The Warren Act was adopted on February 21, 1911, which is classified to 43 U.S.C. §§523-525. Section 1 of the Warren Act (43 U.S.C. §523) clearly provides that when storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any reclamation project, the Secretary of the Interior, preserving a first right to the lands and entry men under the project, is authorized, upon such terms as he may determine to be just and equitable, to contract for impounding, storage, and carriage of water to an extent not exceeding such capacity with irrigation systems operating under the Carey Act (43 U.S.C. §641), and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. It is clear from this section of the Warren Act that the purpose of the reclamation project to provide water for irrigation should not be compromised, and that any excess capacity should be first used for distributing water for irrigation. There is an ever-increasing demand for the use of excess capacity in storage or distribution facilities to provide water for non-irrigation purposes. It is believed that such non-irrigation purposes should be accommodated, so long as the original purpose and use of excess capacity for irrigation retains its priority for such use of excess capacity.

Section 1 of the Warren Act further provides, among other things, that the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. This section further provides that the entity contracting for such water shall not make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States, except to such extent as may be reasonable and necessary to cover cost of carriage and delivery of such water through their works. Disputes have arisen as to whether or not the terms by which the excess capacity is to be used, as determined by the Secretary, are in fact just and equitable. Disputes have also arisen in regard to the disposition of monies received from the use of excess capacity in reservoirs and distribution systems that were or are being paid for by existing project beneficiaries. The Bureau of Reclamation and the previous Administration took the position that all such funds should inure to the benefit of the Reclamation Fund, and should not be applied to the cost of operation and maintenance, construction, or for the benefit of project beneficiaries who have paid or committed to pay the construction and operation and maintenance costs of such facilities. The Bureau of Reclamation and the previous Administration also took the position that only the Secretary of Interior has the authority to contract for the use of excess capacity for the storage or delivery of water for irrigation. This is inconsistent with subsection J of the Fact Finders Act of 1924 which provides that the miscellaneous revenues generated by the Warren Act contracts that provide for the sale or rental of surplus water should be credited to the project or divisions of the project to which the construction cost has been charged. Notwithstanding these provisions, the Bureau of Reclamation is urging that the Warren Act be interpreted to mean that it may recover interest on construction costs and such funds would be paid into the Reclamation Fund, to the exclusion of project beneficiaries who have paid or are

paying the construction costs. Amendments to the Warren Act should be adopted to clarify and prohibit this interpretation of the existing Warren Act, and to expand its use, when appropriate.

The Warren Act should be amended to insure that when the operation and maintenance of a facility has been transferred to the project beneficiary, that entity operating and maintaining the facilities which have excess capacity should be entitled to contract for the use of such excess capacity. Amendments also should clearly provide that all monies received by the Secretary or the contracting entity should first be credited to and applied to the operation, maintenance or repair costs for the project, then to construction charges for the project or division of the project, and finally to the project beneficiaries. The original Warren Act of 1911 contemplated that the reclamation facilities would be operated and maintained by the Bureau of Reclamation, and not the project beneficiaries. Today, except for storage, most facilities are operated and maintained by the water users.

Amendments to the Warren Act and related acts should recognize that although legal title to reclamation facilities may rest with the Bureau of Reclamation, the equitable title lies with those project beneficiaries that have paid the construction cost of the facilities pursuant to the Reclamation Act of 1902. The United States, and particularly the Bureau of Reclamation, should not be authorized by Congress to assert a right to use these facilities for purposes which are contrary to the purposes established in the authorization for such projects. Any amendments to the Warren Act should also insure that project purposes are not compromised and that no use of project facilities should be authorized by contract or otherwise without the approval of the project beneficiaries or in the authorizing legislation for the construction of a facility, and that the equitable owners of the facility should receive the benefits, especially where the construction and operation and maintenance costs are presently being paid by the project beneficiaries, and not the Bureau of Reclamation

Position Statement

Resolution 2006-10 *Water Service Contract Renewal*

On November 10, 1988, the Solicitor of the Department of Interior correctly held that the renewal of long-term water service contracts within the Friant Division of the Central Valley Project did not constitute "a major federal action significantly affecting the quality of the human environment" and was therefore not subject to the provisions of the National Environmental Policy Act (NEPA). The opinion was based principally on the Act of July 2, 1956, which provided that water service contracts executed under Section 9(e) of the Reclamation Projects Act of 1939 were to be renewed for the same quantity of supply as was made available under the original water service contracts and historically beneficially used. In addition, the opinion held that the renewal of water service contracts would not alter the status quo, and therefore would be validly subject to a "categorical exclusion" from NEPA, even if NEPA was otherwise found to apply.

The opinion also noted that the 1956 Act was the result of concern by the water users that the enormous investments in the agricultural economy, so critically dependent upon this water supply, not be jeopardized or lost at the end of the forty-year term of the original water service contracts.

The decisions of the federal District Court in the litigation involving the renewal of the Friant contracts and provisions of the Central Valley Project Improvement Act (P.L. 102-575) have had the effect of raising doubts about the long-term availability of the water supply and decisions that have been relied upon for the past forty years and continue to be relied upon today, thus destroying existing economies and depriving the nation of vitally needed food and fiber. Nevertheless, it is important that Interior and the Bureau take appropriate steps to provide as much certainty and stability in the contract renewal process (and the renewal contracts themselves) as the law allows.

Position Statement

Resolution 2006-11 *Colorado River Salinity Control*

The Colorado River provides important water supplies for 18 million Americans in the seven basin states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. These people live in the most arid portion of the United States and rely heavily upon the Colorado River for municipal and industrial water supplies, as well as for irrigation for 1.7 million acres of prime agricultural land. In addition, the Colorado River supplies water for half a million people and half a million acres of irrigated farm lands in the Republic of Mexico.

The seven Colorado River basin states and their water users have been working with Congress, the Executive Branch of the federal government, and the courts for many years to assure a fair and effective allocation of the river's water supply. Salinity levels in the Colorado have become a major issue with which the Colorado River Basin states have had to deal. Without implementation of salinity control measurers, Colorado River salinity levels are projected to increase to about 1,000 mg/L by the year 2010. The economic damages currently experienced by municipal, industrial and agricultural users of Colorado River water in the United States alone amount to about $500 million per year and are expected to double by the end of the century.

Salinity limits on water delivered from the Colorado River to Mexico are a part of a treaty obligation. The Mexican Water Treaty of 1944 obligates the United States to deliver a “guaranteed annual quantity” of 1.5 maf of Colorado River Water to Mexico. The United States may determine, under a declaration of surplus conditions on the river, that an additional 200,000 acre-feet is available for delivery. After completion of the Wellton-Mohawk Division of the Gila Project in the early 1960's, the Bureau of Reclamation began drainage pumping in order to avoid crop damage. Mexico protested the increased salinity in the water delivered which resulted in a series of Minutes to the Treaty. Minute 242, adopted in 1973, is primarily focused on salinity issues. Under this treaty amendment the United States must deliver a quantity greater than 1.36 maf/yr at

the Northern International Boundary. The United States is obligated to maintain an annual average salinity at Morelos Dam in Mexico of no more than 115 ppm, plus or minus 30 ppm, over the annual average salinity of the Colorado River at Imperial Dam in the United States

In 1974, Congress enacted the Colorado River Basin Salinity Control Act (PL 93-320) to implement Minute 242, and to establish a program for controlling Colorado River salinity level within the United States. The seven Colorado River basin states adopted, and EPA approved, numeric salinity criteria for the river and a plan for implementing salinity control measurers to maintain that criteria, while the basin states continue to develop their respective shares of Colorado River water. In 1984, PL 93-320 was amended to provide additional salinity control activities including a new voluntary, costs-shared, on farm salinity control program by the Department of Agriculture as well as a larger percentage of non federal cost sharing for Department of Interior programs so that the numeric criteria can be maintained in a cost-effective manner. In 1995, the law was amended to increase the Bureau of Reclamation's appropriations ceiling for construction of new salinity control projects. The amendment also authorizes Reclamation to implement new measures basin-wide one month after the submittal of a planning report to the appropriate committees of Congress for consideration.

Long-term use of Colorado River supplies have increased the salinity of Southern California's groundwater basins and has significantly reduced the ability to recycle wastewater for beneficial uses. A regional salinity management study jointly funded by the United States Bureau of Reclamation and The Metropolitan Water District of Southern California has recommended that approximately two hundred million dollars in regional brine lines be constructed to maintain the long-term salt balance of the southern California coastal plain. The Southern California Regional Brine Authorization Act would provide that twenty-five percent of these construction costs be provided by the Bureau.

Position Statement

Resolution 2006-12 *Transfer of Reclamation Project Facilities*

Those reclamation projects which have been constructed by the federal government have increased the federal debt which needs to be reduced. Administration of those irrigation projects by the federal agencies have been costly and can be more effectively administered and operated by the individual project beneficiaries. Increasing federal mandates and other demands which are unfunded have placed costly and undue burdens upon project beneficiaries. Renegotiation of federal contracts have been slow and the length of the contracts have been severely reduced unjustly to the project beneficiaries.

Transfer of reclamation project facilities and related or acquired lands, which were federally funded, to those project beneficiaries who have requested to purchase their respective facilities and dams must be accomplished by legislation. When the project facilities and dams were originally built construction costs were determined. These

construction costs should be the cost basis for said transfer. Where final payment has not been made, cash discounts, depreciation and unaccounted for credits should be considered to reduce such costs.

It is also appropriate to transfer multiple purpose reclamation project facilities to project beneficiaries. The legislation urged here should not foreclose this type of transfer or other mechanisms short of the transfer of title to these facilities which might serve the purpose of privatization.

Position Statement

Resolution 2006-13 *Flow Augmentation*

Irrigators in the reclamation states see no environmental justice in treating the effects of hydropower, navigation and industrial development as the baseline against which the effects of earlier irrigation development on listed species and their habitat must be measured. Indeed, it is often the case that the non-irrigation development has been the principal cause of the ecosystem degradation which resulted in the listing of native fish, wildlife, and plant species as endangered or threatened pursuant to the Endangered Species Act.

It is equally unjust, and in many instances unlawful, to take or threaten to take water appropriated for irrigation, water protected by compact, or water stored in a reclamation facility for reclamation purposes, to provide flow augmentation in mitigation of the incidental take of endangered or threatened species or their habitat or to justify a no-jeopardy finding from an incidental take which was caused by neither the appropriation and diversion of the water for consumptive uses nor the storage of water in a reclamation facility for consumptive uses.

It is absolutely necessary that the federal agencies charged with enforcement of the Endangered Species Act or the Clean Water Act recognize that the waters within the respective states belong to those states and that the appropriation of such water shall be controlled and implemented by each respective state, and the doctrine of First in Time is First in Right must be held inviolate.

Efforts in the Pacific Northwest by the National Marine Fisheries Service and the Bureau of Reclamation to obtain water from reclamation storage facilities for the purposes of augmenting flows in the Snake and Columbia Rivers for endangered species in mitigation of injury and incidental take of listed species and their habitat by federal facilities located on said rivers violate the above principles. Such efforts have been pursued for several years under the threat that if water is not provided it will be taken, notwithstanding the fact that there is no clear legal authority for the taking of such water to mitigate conditions created by the federal government in its lower Snake and Columbia River Dams. Such efforts are most grievous when there is no clear scientific evidence that augmented flows will reduce the incidental take of listed species or enhance their

recovery in the lower Snake and Columbia Rivers. The taking of appropriated water should never be a reasonable and prudent alternative.

Position Statement

Resolution 2006-14 *Uranium Mill Tailings Pile Removal and Remediation*

In 2000, the Congress amended the Uranium Mill Tailings Radiation Control Act of 1978 to authorize federal participation in remediation of the ten and one half million ton pile of uranium mill tailings in Moab, Utah, which is located 500 to 700 feet from the Colorado River, 150 miles upstream of Lake Powell, Utah. Its leachate continues to contaminate the underlying groundwater and the resulting contamination continues to seep into the Colorado River at an estimated rate of 50 gallons per minute. Uranium is a known kidney toxicant and is considered by EPA to be a known human carcinogen. At the current time it is estimated that annual appropriations in the amount of ten million dollars a year for a period of ten years will be necessary to carry out this congressional authorization.

Position Statement

Resolution 2006-15 *Resolution of Resource Conflicts*

A conflict has developed in the use of lands which form a part of an area which is the site of a proposed water supply project. The US Fish and Wildlife Service (FWS) has accepted a donation of interests in 3,802 acres in Wood County, Texas from the Little Sandy Hunting and Fishing Club. This same land forms a part of the Waters Bluff Reservoir Project proposed for development by the Sabine River Authority of Texas in cooperation with the US Bureau of Reclamation. The actions are mutually exclusive. FWS proceeded with hearings and invited public comment regarding the proposed donation and related environmental assessment as a part of its "Bottomlands Hardwood Preservation Program." The FWS summary downplayed the adverse impact of acceptance of the donation of land on projected water development though such acceptance would legally preclude the development of the reservoir on donated lands. It is noted that after the donation, the general public does not have access to the donated lands which remain a private hunting and fishing club. Little if any coordination occurred between FWS and the Bureau in pursuing their divergent objectives even though both operate under the Secretary of Interior. This is not an isolated conflict but rather a direct result of divergent objectives of the Service and agencies seeking water resource development throughout the nation.

If donated lands are accepted by FWS within proposed reservoir projects, such projects must realistically be abandoned. Significant is the fact that numerous other proposed reservoir sites have been targeted by FWS as "Bottomland Hardwood Preservation Sites."

Determination as to what is in the best interest of the general public requires that a balance be determined and observed between competing constituencies. The preferable

course is for proponents of water development and environment preservationists to reach accommodation. There must surely be coexistence between man and nature, and this can be achieved by rational people representing both concerns. There is no reason why water sup-ply reservoirs and waterfowl cannot coexist and that room cannot be found around reservoir sites for preservation of some bottomland hardwoods.

For the foregoing reasons, it is suggested that the Secretary of Interior establish a procedure for timely resolution of conflicts in proposed uses of natural resources that will assure full prior consideration of the views of all affected federal, state and local agencies and full prior evaluation of economics, engineering and environmental factors. An example of such a procedure is found in the 1994 Framework Agreement involving the Secretary of the Interior and various federal and state agencies which establishes a process intended to lead a long-term solution to water supply reliability and environmental problems in California's Bay-Delta estuary. The procedure should prevent federal agencies from accepting contributions of interests in real property or taking positions in litigation or any other actions that would circumvent full and fair evaluation of those conflicts without first advising all affected federal, state and local agencies in a timely manner.

Position Statement

Resolution 2006-16 *Safe Drinking Water Supplies*

Protection of safe public drinking water supplies is of primary importance to the members of this Association as well as to the nation generally. Congress enacted the Safe Drinking Water Act in 1974, directing the Administrator of the Environmental Protection Agency to set national drinking water quality standards (42 U.S.C. Sec. 300f, et seq.); and amended that Act in 1986 (PL 99-339) by directing the Administrator to, among other things, set maximum contaminant level goals. Lead contamination of consumer products such as paint and gasoline has been a problem for many years. EPA, through its ban on lead in gasoline, paint and solders, has significantly reduced environmental lead exposure. Nationally, lead in water makes up less than 10 percent of an adult's lead intake. In the continuing effort to assure safe drinking water supplies, EPA and others are developing more stringent methods to protect against lead contamination.

Most lead contamination in water occurs as a result of prior use of lead-bearing solder, pipes and fittings in constructing plumbing systems in homes and businesses. The 1986 amendments to the Safe Drinking Water Act (SDWA) added a general prohibition on use of lead materials for installing or repairing plumbing systems (42 U.S.C. 300g6).

On June 7, 1991, EPA finalized regulations establishing requirements to minimize lead in drinking water supplies. The regulation adopts a treatment technique of optimal corrosion control, public education, lead service line replacement and source water treatment to reduce lead levels in drinking water.

EPA, in addition to implementing the final regulation, should protect the public against exposures to lead from drinking water by continuing to enforce the ban on the use of lead-bearing materials in home plumbing systems as required by SDWA by actions such as that brought by the State of California against faucet manufacturers for leaching lead into drinking water. Enforcement at the source of pollution is more effective and efficient than requiring water purveyors to introduce corrective measures.

Scientific and technical regulations, such as the final lead regulation, must be developed allowing public input. If Congress does not believe that the lead regulation is stringent enough, it should legislatively direct EPA to craft more stringent requirements. In this regard, public water suppliers should support a mandatory public education program. More stringent treatment technique requirements are not feasible, cost effective or more health protective. These requirements, on the other hand, would cost water users millions of dollars without significant improvement in public exposure to lead in the environment generally.

Radon is a serious inhalation health concern in some areas with a minimal contribution from the drinking water supply. Because the Safe Drinking Water Act requires the regulation of radon in drinking water, public water suppliers should have adequate flexibility to minimize the radon water contribution at a reasonable cost, when the radon in the water contributes meaningfully to the airborne radon levels. Most importantly though, public education programs should be supported to educate the public on ways to control radon in residential homes and buildings.

Recent experience and investigations indicate that disposal of solid waste in dump sites overlying community groundwater supplies can pose a serious threat of contamination to those supplies, particularly where those sites are located in highly permeable areas that provide little or no opportunity to correct failures of containment systems. The federal government already exercises authority over such dump sites under RCRA, in cooperation with state and local agencies.

On January 22, 2001, EPA issued revised drinking water standard for arsenic of 10 ppb. The standard is considerably more stringent than the prior Maximum Contaminant Level (MCL) for arsenic (50 ppb), but less stringent than the revised MCL first proposed by EPA (5 ppb). Nonetheless, serious doubts have been raised about the accuracy and applicability of the health effects information that was used by EPA to establish the revised standard. Currently there are a number of national and regional data-gathering projects being conducted as well as research on epidemiological impacts, treatment technologies, health effects, and analytical methods. Due to the potential impact of arsenic on water utilities these projects should be supported. EPA has indicated that it expects to make a final decision on whether to revise the January 2001 rule as part of the next six-year review of drinking water standards, which is due in 2008.

Perchlorate has been detected in a number of groundwater supplies in California and in Colorado River supplies in the lower basin. Some knowledge of the health effects of perchlorate is available since perchlorate was used at one time to treat Graves disease

(overactive thyroid). In 2002, state legislation was adopted mandating the promulgation of a state MCL for perchlorate by January 2004 similarly, various federal bill shave been introduced that would require issuance of a federal MCL by July 2004. However, additional research needs to be conducted to establish an appropriate and scientifically-defensible MCL for perchlorate. Also the use of perchlorate has been nationwide. An assessment of industries that have utilized perchlorate needs to be conducted as well as an assessment of potentially affected drinking water supplies and encouragement of clean-up of contaminated supplies.

Studies have shown Hexavalent Chromium or Chromium 6 may occur naturally in some surface and groundwater supplies. Recently monitoring data also show that Chromium 6 levels in some California and the Colorado River supplies are higher than those naturally occurring levels due to contamination. Specific research needs to be conducted for the purpose of developing a drinking water standard. That research should include collecting health effects data and assessing treatment capabilities.

Finally, EPA should provide adequate flexibility to public water suppliers to use their financial and technical resources to provide optimum public health protection and must implement the Safe Drinking Water Act Amendments of 1996 in accordance with congressional intent. These amendments authorized a drinking water state revolving fund program to assist public water systems in financing the costs of infrastructure needed to achieve or maintain compliance with federal requirements and to protect the public health.

Specifically, Section 1452 authorized the Administrator of the United States Environmental Protection Agency (EPA) to award capitalization grants to the states, which in turn can provide low-cost loans and other types of financial assistance to eligible projects.

In 1998, EPA issued Final Guidance for the administration of drinking water state revolving funds. Unfortunately, the Final Guidance prohibits states from providing financial assistance for the construction of dams or reservoirs, or the acquisition of land and water rights. Moreover, a subsequent EPA proposal to allow limited financial assistance for such projects for small systems is unnecessarily restrictive.

Dams and reservoirs are an integral component of many drinking water systems in western states. Water rights are also an integral component and a legal requirement under state law, for drinking water systems in the West. The acquisition and development of water rights may be necessary and the most cost-effective alternative to improve the safety and reliability of drinking water systems in many of the arid western states. Such actions may also be the most environmentally sound solution to a specific problem, consistent with state and federal environmental laws.

Studies have shown that Hexavalent Chromium or Chromium 6 may occur naturally in some surface and ground water supplies. Recent monitoring data also show that Chromium 6 levels in some California and the Colorado River supplies are higher than

those naturally occurring levels due to contamination. Specific research needs to be conducted for the purpose of developing a drinking water standard. That research should include collecting health effects data and assessing treatment capabilities.

Position Statement
Resolution 2006-17 *Municipal Discharges Into Irrigation Works Exemption*

Section 402 (1) of the Clean Water Act exempts “discharges composed entirely of return flows from irrigated agriculture” from NPDES permitting. The “composed only of return flows from irrigated agriculture” language of Section 402 (1) appears to nullify the permitting exemption now provided by the Clean Water Act, if a canal or drain carries any storm water in addition to “irrigation return flows”.

It is not uncommon for irrigation canals and drain systems to intercept and carry some storm-water runoff in order to prevent local flooding. Some irrigation districts are also required by state law to provide flood control protection by carrying away storm waters. Most of the storm water carried in agricultural drains is not subject to NPDES permitting. In recent years the USEPA has increased the scope and coverage of its municipal storm-water permitting-program so that irrigation canals and drain systems in a district may intercept either or both permitted storm-waters and those not subject to permitting. Section 402 (1) should be amended to include both classes of storm-water when joined by irrigation return flows.

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Position Statement
Resolution 2005-3 *Integrated Resource Planning for Energy Consumption*

Section 114 of the Energy Policy Act of 1992 is an amendment of Title II of the Hoover Powerplant Act of 1984. The purpose of the amendment is "to require the Western Area Power Administration to issue rules requiring all but the smallest customers to engage in integrated resource planning (IRP)."

In passing this Act, Congress took special note of the problems of small customers and the potential for duplicative, wasted efforts if other IRP requirements are not fully recognized. The language of the Act, Congressional Record and legislative history are explicit on these matters. Long-term power contracts are essential to any long-range planning effort. Before an adequate IRP that includes Federal power as part of the resource can be accomplished and implemented, there must be a clear and binding understanding as to the amount and period of availability of that resource. NWRA urges

the Western Area Power Administration to use its existing authorities to enter into longer-term contracts and make those contracts a part of the IRP process.

Position Statement

Resolution 2005-6 *Ground water Protection and Management*

A national strategy for groundwater management should be developed based on implementation at the most local level of government capable of that management. Groundwater management and protection is and must remain a decentralized activity directed and implemented at the state and local level.

NWRA believes that the federal role in groundwater protection should be one of adoption of source control programs based on prevention rather than clean up. Such a strategy should not be excessively prescriptive and detailed, rather, designed to allow the state and locals the flexibility to implement the most practical and effective solutions that fit local situations and still meet federal goals. Federal funding and technical assistance should facilitate efforts for proper protection of the nation's groundwater.

No federal program should be developed without complete coordination of federal, state and local agency programs.

Federal farm programs provide many economic incentive opportunities for improved management of the water resources of the nation. Additional, targeted placement of lands (with poor water use efficiencies) in the Conservation Reserve Program would eliminate that associated use of groundwater. This will provide significant savings in groundwater across the country. The Environmental Quality Incentive Program (EQIP) can provide assistance to improve the efficiency of the use of groundwater. Our understanding of the best ways to implement water conservation programs is always improving through research and experience. Implementation of EQIP, as currently planned, would allow a single contract on a parcel of land for the life of the EQIP program. We do not currently understand all the best ways to implement water conservation practices and a single contract would eliminate the possibility of future cost-sharing on newly refined practices. EQIP and similar programs should be flexible enough to meet future needs and make use of improved technologies.

Position Statement

Resolution 2005-7 *Settlement of Indian Reserved Water Rights Disputes*

Indian water rights claims litigations have been and are expensive and time consuming. Therefore, negotiation of such claims for quantification and other aspects of Indian water rights is highly desirable and in the interest of all parties.

The negotiated settlement of such claims should not, however, adversely impair the water or power rights or interests of nonparticipants to the settlement process. For example, a

settlement dependent on the use of non-local water or power sources may well interfere with the use of those resources in the basins of origin or adversely affect the local or regional economies of those basins. Settlements having such adverse effects should be discouraged.

For the past hundred years, Congress has encouraged development of the arid West by providing mechanisms by which a public interest in water could be converted to a private property right. Congress has also authorized and funded many water projects which have been or will be harmed by assertion of reserved rights.

As a matter of policy, Congress has generally provided in the Reclamation Act of 1902 and the Federal Power Act of 1920 that compensation be provided to holders of water rights vested under state law when they are interfered with by projects authorized or licensed under those two acts. There should be no difference in that policy and the potential harm that can come from the assertion of reserved water rights. In any event, the social costs of displacing existing uses for the benefit of national programs should be borne by the federal taxpayers and not by the affected users.

The United States Government has increasingly looked at off-reservation sales or leasing of Indian reserved rights as a funding method to fulfill the national trust responsibility of the United States with regard to economic development on Indian reservations. Since this trust responsibility is a national obligation, Congress should appropriate funds from the national treasury for this purpose.

Moreover, off-reservation use of Indian water has the potential of disrupting the water management system in the West and adversely affecting existing water rights. There are existing local and regional economies that are dependent upon the use of unused Indian water, as well as the return flow from water used on the reservation. They will be detrimentally impacted if such water may be transferred off the reservation. In addition, such areas may also be forced to engage in bidding wars which may have long-term detrimental impacts, both economic and political. By allowing off reservation transfers, the potential exists to allow a party with no water rights in a particular stream or basin to obtain priorities to and take water away from entities and states with long-standing rights. Additionally, some Indians are also opposed to severing the land and water rights, as they would like to see development on the reservation itself and preservation of their cultural values on the reservation.

In addition, a serious uncertainty exists regarding the ability of a state to withdraw a river from the federal system if it has been included in that system by administrative rather than congressional action. In the absence of a specific congressional designation, those rivers should be subject to withdrawal by appropriate action of the respective state legislatures.

It is also recognized that water planning and policy should not be determined in a vacuum and any implied federal reservation of water for any purpose creates confusion and chaos in implementing state water policy and planning. For this reason, should Congress

perceive a need for water rights to accompany wild and scenic designations, it should direct the appropriate federal agency to file for such a right under the substantive and procedural provisions of state law.

Position Statement

Resolution 2005-8 *Federal Nonreserved Water Rights*

The Association concurs with the Department of Interior in reaffirming the historic primacy of state water management by announcing the Department's repudiation of a controversial 1979 legal opinion that sought to establish a so-called "federal non-reserved water right."

An opinion released by William Coldiron, former Interior Solicitor, canceled out a June 25, 1979, opinion by one of Coldiron's predecessors, Leo Krulitz. State officials throughout the West had expressed long-standing dissatisfaction with Krulitz's opinion, contending that it illegally interfered with their control of state water resources. Coldiron's opinion said Congress had power to control the use of water for the benefit of federal lands, but that Congress has demonstrated its intent for the states to control the allocation of waters within boundaries, in all but the most limited circumstances. The so-called doctrine of federal non-reserved water rights has been the subject of four legal opinions by the United States government within the past several years (Solicitors Krulitz, Martz, Coldiron, and the Office of Legal Counsel - Department of Justice). This doctrine is antithetical to orderly water supply and management because it purports to create a whole new class of water rights in the United States government. The alleged non-reserved water rights, if recognized, can seriously disrupt rights created under state law systems, rights which are vital to the economic and physical well-being of countless water users. The federal reserved rights doctrine itself was a substantial incursion into state water law systems. The assertion of federal non-reserved rights, in addition to reserved rights, is intolerable. The President should specifically direct federal agencies to appropriate or purchase water needed for uses of the United States in the same way that any water user in the state jurisdiction must proceed.

Position Statement

Resolution 2005-9 *Drought Mitigation and Assistance*

The West and much of the nation is experiencing major extended drought conditions. Lack of adequate water supply and storage in some regions of the country has resulted in a collapse of the regions' economic base and the social well-being of their residents.

Federal water development programs of the Corps of Engineers, Bureau of Reclamation, Department of Agriculture, and various other federal agencies have provided water supply storage and drought management programs which have mitigated the effects of periods of drought for many regions and communities.

During this century, the federal government has invested approximately $15 billion in the nation's domestic, industrial and agricultural water supply infrastructure. Virtually all water users served by federal projects have been spared the devastating effects of the current drought. Conversely, regions without adequate surface storage have suffered the full effect. Drought relief legislation enacted over the past forty years has cost several time the federal investment in water supply and has resulted in only minimal short-term assistance. It is, therefore, clearly in the interest and welfare of the nation that Congress and the President pursue a program of water supply infrastructure development and that this program be comprehensive, addressing the unique climatic and hydrological features of various regions.

The ability of state and local governments to cope with and react to severe drought conditions varies greatly across the nation. There is an overwhelming need for federal technical and financial assistance in drought response planning and regional coordination. This assistance must be centralized in one agency of government and not fragmented among several departments and agencies.

Position Statement

Resolution 2005-10 *Rural Domestic Water Systems*

Congress and the Administration should recognize that the passage of the Safe Drinking Water Act (SDWA), as amended in 1996, has established a quality of life to which its citizens are entitled. However, many small communities and rural areas, especially in the sparsely populated states and regions, will be hard-pressed to meet the criteria and standards of the Act without upgrading systems, securing new water sources and hiring personnel with needed expertise.

EPA, in implementing the SDWA, continues to identify new health hazards which small systems must test for, monitor and correct if necessary. Many systems do not have current staff, nor can afford to hire staff, with the expertise or education to meet management capabilities to ensure compliance with EPA requirements.

Regionalization of systems which are already in planning stages, can be a feasible solution in many areas. Advantages include an economy of scale, an increase in the feasible area to secure a water source, a reduction in specialized manpower and an increase in the revenue base. In some areas of NWRA membership, regionalization also offers an opportunity to include Indian and non-Indian users to the benefit of all citizens. Economy of scale allows for more economically feasible costs per individual in providing central administration, common delivery systems, new water supply sources, central treatment facilities and reduction in specialized individuals having the skills needed, as federal and state governments add to the monitoring requirements for a public water supply. Regionalization also allows an increased revenue base for project sponsors. Regionalization allows for sponsors to utilize a different water source previously not available because of costs.

A prime example of the benefits of regionalization occurs in South Dakota where four separate projects (West River/Lyman-Jones, Oglala Sioux, Rosebud Sioux and Lower Brule Sioux) were economically unfeasible. Merging the four projects in the Mni Winconi Rural Water System has brought the economic feasibility into reality. By utilizing Missouri River water, suitable water is provided to three Indian reservations, small communities and rural households who could neither meet the federal requirement for cost share dollars for individual projects nor the costs of the SDWA requirements.

Position Statement

Resolution 2005-11 *Wilderness and Roadless Areas*

Numerous wilderness areas have been established by law after hearings and review. During this review and hearing process, many promises and commitments have been made by federal agencies to protect, maintain and sustain existing practices, water supply facilities, livestock grazing, etc., to obtain favorable action by Congress in declaring an area as wilderness.

The administrating agencies have betrayed the trust given to them by the Congress and the people in the management of wilderness areas relating to water supply facilities by ignoring these previous commitments.

An insignificant portion of the RARE II lands is in the eastern national forests, leaving the vast majority of the RARE II lands in the national forests principally in the states that are members of the National Water Resources Association; and this action is restricting the use of these lands for water and other resource developments.

Under the Wilderness Act, strict criteria are set forth under which areas are determined to be suitable for wilderness classifications. However, the review criteria instructions and guidelines, as set forth, significantly lower the standards required of an area in order for it to be classified as "roadless" or "wilderness" for the purpose of including an unreasonable mass of land within these classifications. These guidelines completely ignore the potential use of lands for water and energy development to meet the needs of the people.

Position Statement

Resolution 2005-12 *Competing Uses at Federal Water Projects and Surcharges*

For decades, federal water policy has been designed to harness the nation's rivers to promote specific purposes and uses. The federal multipurpose water projects are authorized to meet specific purposes with specific benefits and repayment responsibilities.

Project beneficiaries recognize the value and finite nature of water resources and consequently support their efficient use, including conservation, load management and system efficiency programs. The development of the nation's rivers has created

environmental costs, benefits and opportunities that have led to additional, unanticipated uses of these projects. In most instances, environmental benefits have been provided without cost to the general public. Great injustices will occur by the adoption of any policy which attempts to reallocate storage water or allows changes in project operations without regard to vested rights or beneficiaries of that project and the laws of the state in which the project is located. Such proposals cannot and should not be proposed or implemented under the Endangered Species Act to mitigate harm to critical habitat or the taking of an endangered or threatened species by federal or private activities unrelated to the project in question.

Water stored at federal facilities is allocated among existing authorized purposes and the water is released in a manner consistent with those authorized purposes and established water rights. The advocates of new and unanticipated project uses are seeking changes in the operation, use and management of federal water projects and the use of federal power revenues in order to secure or enhance their interests.

The additional demands placed on the resource by advocates of such new or expanded project purposes will reduce the benefits of the project to existing project users as originally authorized, and will increase their costs.

In the construction of many federal reclamation projects, environmental impacts have been fully mitigated and the responsibilities for this mitigation appropriately allocated. It is totally inappropriate to arbitrarily assess a surcharge upon project water, ostensibly to meet environmental mitigation objectives, as was the case with the 1993 administration proposal for the creation of a natural resources restoration fund. Justifiable remediation efforts should be undertaken on a case by case basis, taking into account all appropriate factors, including the benefits associated with the project and the project beneficiaries' ability to pay.

Position Statement

Resolution 2005-13 *Federal Policy on Non-Agricultural Transfers of Water in Reclamation Projects*

The Department of the Interior ("DOI") adopted principles governing voluntary transactions that involved or affected facilities owned or operated by the DOI dated December 16, 1988. As a part of those December 16, 1988 principles, voluntary water transaction criteria and guidance was set forth. Some of the principles adopted were:

14. The role of the Federal Government arises from its being an owner of water storage and conveyance facilities by which it can assist state, tribal and local authorities by improving or facilitating the improvement of management practices with respect to existing water supplies.

15. Exchanges in type, location or priority of use accomplished according to state law can allow water to be used more efficiently to meet changing water demands.

16. The DOI will be asked to approve, facilitate or otherwise accommodate voluntary water transactions that involve or affect facilities owned or operated by its agencies.

The principles were intended to afford maximum flexibility to state, tribal and local entities to arrive at mutually agreeable solutions to their water resource problems and demands, to clarify legal, contractual and regulatory concerns of the DOI, and that all proposed transactions be between willing parties and in accordance with applicable state law. Some of the principles recognized were:

a. Voluntary water transactions must be in accordance with applicable state and federal laws.

b. Voluntary water transactions can be accomplished without diminution of service to the water users of the project.

c. Voluntary water transactions can be accomplished where there are no adverse third-party consequences and are in accordance with applicable state law.

On March 13, 2000, the U.S. Bureau of Reclamation published a draft of a paper entitled "Objectives, Principles, and Policies Governing the Voluntary Transfer of Water at Bureau of Reclamation Projects." The principles and policies set forth therein were purportedly to supplement and expand upon the 1988 principles of the DOI. There is a substantial change in the position of BOR in these draft Objectives, Principles and Policies. In the Introduction, the BOR asserts that it has developed substantial water supplies in the 17 western states, rather than stating that it has constructed irrigation works for the storage, diversion and development of water upon assurances that the costs will be repaid by the water users. The BOR states that entities have contracted with the Reclamation to receive the water supplies developed and delivered by Federal Reclamation projects, and fails to note that most entities have contracted with the Reclamation to pay for the costs of constructing its delivery system and its allocated share of storage facilities for the right to receive the water stored in the space allocated to it. The Reclamation sets out that it is a wholesale water supplier, when in fact, Reclamation is merely the legal owner of facilities it constructed for the storage and distribution of water and in return has received or is receiving the construction and operation and maintenance costs of the project from the beneficial users of the water. The BOR then states in the Introduction that there is a dominance of agricultural uses of water in Reclamation projects because the Bureau's program was designed to provide economic development and stability when the West was still being settled and its arid lands reclaimed; when in fact, the primary and, in many instances, the sole purpose of the Reclamation program was to provide the financing necessary to construct large reclamation projects that were beyond the financial capability of individuals. Finally, the Bureau in the Introduction states that the Reclamation is experiencing an increased number of proposals from water users "to sell the Reclamation project water" to which

they are contractually entitled to other users and/or to convert their existing irrigation uses to new users, when in fact the proposals are by the users to sell their own water which is stored and/or distributed in a Reclamation facility for the water user.

These attempts to redefine the role of the Bureau of Reclamation and the relationship between the Bureau and water users in a Reclamation project constitute a blatant misstatement of facts and are clearly misleading to all but the well informed. This posturing by the proposal of these policies can only be explained by the desire to imply that water supplies in the West are owned by the Bureau of Reclamation and the use of such water will be controlled by the Bureau of Reclamation at its discretion. Such overreaching invites requests for the use of water stored or diverted by Reclamation facilities for uses not originally authorized by the project and inconsistent with the state law upon which the water rights for such projects were acquired. Examples of such overreaching are as follows:

a. In part A., the Bureau recognizes that voluntary transfers of project water must be in accordance with applicable state laws, and then provides that transfers will not be compelled unless so required by legislative directive or judicial decision. It would appear that these principles are inconsistent.

b. Under part B., principle B.3 provides that transfers will involve both administrative costs and Federal charges associated with the project water itself. This is clearly a contravention of its previous policies and would indicate a position of the Bureau that it owns the water. This policy proceeds to identify Federal charges as the recovery of subsidies associated with the project for irrigation purposes, which is not consistent with Federal Reclamation law. This principal then provides that revenues received by Reclamation from the transfer of project water shall be credited in accordance with applicable law and policy, which is to credit the money to the Federal treasury.

c. Principles set forth in part C establish a policy that all third parties, whether or not a water user, shall be entitled to have any effect upon them to be considered, together with any adverse environmental effects, and that mitigation to these parties and needs must be provided. This is an expansion of state law which protects other water rights and the local public interest, not everybody's interest.

d. Under policies governing transfers of project water, the Bureau seems to e adopting a policy that it may approve a change in the nature of use of the water under Federal law, without regard to the laws of the state involved. The Bureau has eliminated the requirement that such transfers must be approved by other project beneficiaries, but provides that Reclamation shall review and decide whether or not a voluntary transfer should be made, whether proposed by the Bureau or any other Federal agency, and no approval by the owner of the project water, the ultimate user, is

required. The new policies do not even require that the BOR obtain approval from the entity which has assumed responsibility for the operation and maintenance of the project involved.

e. Reclassification of land does not alter the nature and use of water.

f. The Bureau definition of "transfer" characterizing small tracts being an M&I use directly impacts the M&I exemption for irrigation districts under the Fair Labor Standards Act.

Position Statement

Resolution 2005-14 *Federal Policy on Water Spreading*

A concerted effort was commenced by the Bureau of Reclamation in 1993 to adopt a policy to address what was perceived to be a violation of federal law and identified as "Water Spreading." Water spreading was defined as the unauthorized use of federally developed project facilities or water supplies (project water) on lands not approved by reclamation for such use. This initiative included efforts to identify the overall water resource management goals for the basin or sub-basin. Stated in another manner, of equal importance to the perceived water spreading issue, was the reallocation of water for instream flow maintenance.

Initial efforts to adopt a water spreading policy to apply west-wide by the Bureau of Reclamation appeared to ignore significant provisions of the Reclamation Act of 1902, as amended. Land classification provisions of the Reclamation Act are for the purposes of determining the capabilities of a project before authorization and repayment ability upon construction. Land classification is now proposed to be used as the criteria to determine the lands which are authorized to receive project water, which is inconsistent with the Reclamation Act.

Little deference is being accorded to the respective states who historically, by law, have the obligation to regulate the place and nature of the use of water in that state. Place of use was a concern to BOR only to the extent obligations for the repayment of construction costs of the reclamation project may be altered or enforced. On the other hand, it appears that the Bureau of Reclamation initially intended to pursue the reallocation of water developed under a reclamation project without regard as to whether or not the beneficial user of the water had established a water right under the laws of the state where the water was diverted and applied to beneficial use or whether the reallocation would be approved by the respective state. Certain legal principles have from time to time been established under the Reclamation Act of 1902, as amended, and it is urged that the Administration follow these principles in defining unauthorized use of project water and in curtailing such unauthorized use of project facilities or project water.

Position Statement

Resolution 2005-15 *Adjudication of Federal Claims*

Federal reserved rights are the greatest impediment to water planning and development in the West. Those rights, once properly quantified, will provide a means for states to determine the remaining waters to be allocated, and can then, pursuant to state law, have those water rights determined, quantified and adjudicated. It is about time some actions were taken to limit the overreaching that some federal bureaucrats continue to involve themselves with, to require compliance with the goals of this Administration and the United States Supreme Court decisions that have limited the far overreaching conclusions that many bureaucrats have had, as it relates to reserved rights, and to provide a means for allowing the waters of the western United States to be put to their best and highest use pursuant to state law.

Each state has established procedures and if it has not done so, should enact procedures to adjudicate federal claims to take full advantage of the McCarran Amendment. Once the United States is joint as a party in a state general adjudication, it must file its reserved water right claims on behalf of Indians and the United States such claims will be barred. Reluctance by the Justice Department to accept state court jurisdiction through attempts to dismiss or remove actions from state stream adjudications has proved fruitless over the years. These actions have done nothing but postpone the important work of quantifying all United States claims to water or water rights. Most recently, the United States has attempted to get around the McCarren Amendment and state stream adjudications by filing "Quiet Title" lawsuits for water rights in federal court. The Justice Department should cease these frivolous actions and take all appropriate steps, consistent with long-standing federal policy of deference to pending state stream adjudications, by allowing federal claims to be adjudicated in state stream adjudications.

To establish the rights to use waters of a state, western states must conduct lengthy, complicated, and expensive proceedings in water rights adjudications. In 1995, Congress recognized the necessity and benefit of requiring the United States claims to be adjudicated in these state proceedings by adopting the McCarran Amendment. Although the McCarran Amendment waived the sovereign immunity of the United States and requires the federal government to submit to state court jurisdiction in the adjudication of its claims to water rights in that state, Congress failed to address the payment of fees by the United States to which all other water right claimants are obligated. In 1992, the United States Supreme Court held that under existing law, the United States need not pay fees for processing federal claims. This decision has resulted in numerous, and often baseless, water right claims being files by federal agencies and a tremendous burden of costs upon western states. Such an unbalanced and unfair arrangement delays water adjudication systems by diminishing the resources of the state necessary to complete them. Such delays add to the difficulties now facing states which are challenged to meet water user and environmental needs within the state. H.R. 4196 entitled "Water Adjudication Fee Fairness Act of 2000" remedies this inequitable position, and places the United States on the same level playing field as other claimants in an adjudication.

Position Statement

Resolution 2005-17 *Instream Flow - Federal Agencies*

The United States Forest Service, Bureau of Land Management, Environmental Protection Agency, Army Corps of Engineers, Fish and Wildlife Service, National Marine Fisheries Service, Bureau of Reclamation and the Federal Energy Regulatory Commission have each acted under the assumption that environmental legislation such as the Clean Water Act, the National Environmental Policy Act, the Endangered Species Act, and the River and Harbors Act of 1899, can be used by federal agencies to require minimum streamflows for water quality and fish and wildlife purposes.

For example, on May 27, 1993, the National Oceanic & Atmospheric Agency (NOAA) issued a biological opinion on the 1993 operation of the federal Columbia River power system. This opinion projected that jeopardy for three species of Snake River salmon would be avoided in 1993 if a number of actions were taken by three action agencies, one of which was the Bureau of Reclamation. One of these actions proposed to the Bureau of Reclamation was that the upper Snake River reclamation facilities be a source of water for flow augmentation in 1993 to replace water that Idaho Power Company may voluntarily pass through its dam to maintain specific flow goals in the Columbia River, which had been halted by federal Columbia River power projects.

In response to the request by the Commissioner of Reclamation for guidance on its legal authority to obtain stored water for this purpose from reclamation facilities, John D. Leshy, Solicitor of the Department of the Interior, rendered an opinion to the Commissioner dated June 14, 1993, which erroneously stated that under the Endangered Species Act,

> (1) reclamation must take all steps necessary to meet the flow requirements set forth in the biological opinion.
>
> (2) each of four options listed is legally authorized and available to the Commissioner which includes:
>
> > (a) leasing of water through a state rental pool,
> >
> > (b) use of unallocated storage water in reclamation reservoirs although no license exists for such use of water from the state,
> >
> > (c) the purchase of storage space from willing sellers, and
> >
> > (d) unilateral reallocation of contracted storage space for use by the Bureau of Reclamation to meet said flows.

It appears the Solicitor has indicated that the use of reclamation storage facilities to provide flow augmentation for endangered and threatened salmon is authorized, and reclamation has the authority to release water currently subject to the spaceholder contracts and water service contracts for salmon recovery purposes, and that the legal consequences of such action should not be considered.

Subsequent biological opinions issued by NOAA continue to identify flow augmentation with water from reclamation facilities that are not within the critical habitat area of listed species, as a reasonable and prudent measure.

Another example can be found in the draft 102 (d) study mandated by the 1977 Clean Water Act for the purpose of implementing 101(g) (the "Wallop Amendment") which prohibits impairment of the state water allocation system. EPA had found that minimum streamflows can be required for water quality purposes, despite the clear language of that amendment to the contrary.

Region VIII of the EPA announced in a draft "Region VIII Water Resources Development Issues and Options Paper" that it would use its EIS and 404 permit review authority to establish minimum streamflows for environmental purposes.

Further, the U.S. Forest Service is now attempting to establish reserved water rights for channel maintenance and sediment transport.

These examples demonstrate that the federal government has embarked upon a system of water allocation and management by regulatory means outside of state water laws. Such was not the intent of Congress when it passed laws regulating the emission or discharge of pollutants into the environment which might adversely affect human, plant and animal life. Any regulatory attempt to condition, restrict, or prohibit the appropriation, storage, carriage and consumptive use of water under federal environmental laws is opposed; and it is urged that the present Administration continue to support a strong system of water allocation and management by the respective states.

Position Statement

Resolution 2005-18 *Essential Fish Habitat*

On October 11, 1996, Congress enacted amendments to the Magnuson Fishery Conservation and Management Act (now known as the Magnuson-Stevens Fishery Conservation and Management Act), directing the Secretary of Commerce, through his designee, the National Oceanic & Atmospheric Agency (NOAA), to establish guidelines to assist Regional Fishery Management Councils in the description and identification of essential fish habitat I fish management plans (including adverse impacts on such habitat) and I the consideration or factions to ensure the conservation and enhancement of such habitat. 16 U.S.C. §1855(b). The amendments also provide that fishery management plans that include the identification of essential fish habitat must be reviewed and the identifications updated based on new scientific evidence and other relevant information.

The amendments require the Secretary, in consultation with participants in the fishery, to provide each Council with recommendations and information regarding the identification of the essential habitat, the adverse impacts on the habitat, and the action that should be considered to ensure the conservation and enhancement of that habitat. There is no provision in the agreements which require the Secretary (NOAA) to consult with persons who are not participants in the fishery, such as the appropriators of water in the respective states under State law, sources of which are located in the designated essential fish habitat or flows tributary thereto. It does not address consultation that occurs under the Endangered Species Act, and the duplication that may arise. The amendments further provide that each Regional Fishery Management Council may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority, and shall comment on and make recommendations to the Secretary and any Federal or State Agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of any anadromous fishery resource under its authority. The Act does not require any Federal or State agency to follow the recommendations.

Under the above authority, NOAA adopted rules and regulations (not guidelines) that provide that essential fish habitat may be identified within both Federal and State waters and requires that the essential fish habitat described will always be greater than or equal to the "critical habitat" for any managed species listed as threatened or endangered under the Endangered Species Act. The rules encourage efforts to minimize depletion/diversion of freshwater flows into rivers and where degraded conditions in a habitat can be reversed through improvement in water quality or quantity measures, including increasing flows, the essential fish habitat should include those habitats that may be improved and would be essential to the species to obtain increased yields.

This represents an unauthorized intrusion on State allocation and management of water resources. Congress has exercised long-standing deference to States in the area of water allocation and management. Absent a clear directive from Congress to the contrary, essential fish habitat should not include state-managed water or waters allocated or managed pursuant to interstate compacts or U.S. Supreme Court decrees.

Consultation between Federal agencies and the Councils are required under the rules. This is duplicative of similar requirements under the Endangered Species Act. NOAA is also to provide recommendations to State agencies regarding state-authorized activities that may impact essential fish habitat.

In short, the rules to expand jurisdiction to areas far beyond fishing in the marine environment, delve into all Federal and State operations or State waters. Ironically, while other activities would be regulated on State waters, fishing would not. NOAA is not authorized to exercise such far-reaching jurisdiction over State-managed water and non-fishing activities. As a result, NOAA' rules should be substantially modified to address these concerns. Absent such action, Congress should enact further amendments to the

Magnuson-Stevens Fishery Conservation and Management act to expressly limit NOAA' jurisdiction.

The proposed rule provides that essential fish habitat may be identified within both Federal and State waters. The proposed rule also encourages efforts to minimize depletion/diversion of freshwater flows into rivers and suggests increasing flows as a measure to improve essential fish habitat.

This represents an unauthorized intrusion on State allocation and management of water resources. Congress has exercised long-standing deference to States in the area of water allocation and management. Absent a clear directive from Congress to the contrary, essential fish habitat should not include state-managed waters or waters allocated or managed pursuant to interstate compacts or U.S. Supreme Court decrees.

Consultation between federal agencies and the councils are required under the proposed rule. This is duplicative of similar requirements under the Endangered Species Act. NOAA is also to provide recommendations to State agencies regarding state-authorized activities that may impact essential fish habitat.

In short, the proposed rule seeks to expand NOAA' jurisdiction to areas far beyond fishing in the marine environment, delving into all Federal and State operations or State waters. Ironically, while other activities would be regulated on State waters, fishing would not. NOAA is not authorized to exercise such far-reaching jurisdiction over State-managed water and non-fishing activities. As a result, NOAA' proposed rule should be substantially modified to address these concerns. Absent such action, Congress should enact further amendments to the Magnuson Fishery Act to expressly limit NOAA' jurisdiction.

Position Statement

Resolution 2005-19 *Funding for U.S. Department of Agriculture's Environmental Quality Incentives Program*

The U.S. Department of Agriculture's Environmental Quality Incentives Program (EQIP) provides technical, educational, and financial assistance to eligible farmers and ranchers to address soil, water, and related natural resource concerns on their lands in an environmentally beneficial and cost-effective and shared manner. The program provides assistance to farmers and ranchers in complying with Federal, State, and tribal environmental laws, and encourages environmental enhancement. The program is funded through the Commodity Credit Corporation. The purposes of the program are achieved through the implementation of a conservation plan, which includes structural, vegetative, and land management practices on eligible land. Five-to ten-year contracts is made with eligible producers. Cost-share payments may be made to implement one or more eligible structural or vegetative practices, such as animal waste management facilities, terraces, filter strips, tree planting, and permanent wildlife habitat. Incentive payments can be made to implement one or more land management practices, such as salinity, nutrient,

pest, and /or grazing land management. The program is carried out primarily in priority areas that may be watershed, regions, or multi-state areas, and for significant statewide natural resource concerns that are outside of geographic priority area.

For Fiscal Year 2001, the President requested that $300 million be allocated for the nationwide EQIP. Unfortunately Congress has chosen to not permit the President to expend in excess of $174 million. (H.R. 4461, now pending.)

Levels of salinity in water sources available to the western United States can result in significant economic impacts to water users. These impacts include reduction in the useful life of household water heaters and plumbing fixtures, limitations on water reuse and groundwater replenishment projects, inability to meet waste discharge requirements under the Clean Water Act, and damages to salt-sensitive agricultural crops. Federal funding for salinity control activities has declined from early 1900s levels. Funding levels are now inadequate. The U.S. Department of Agriculture's Colorado River Basin Salinity Control Program is funded through the EQIP. For example with respect to the Colorado River watershed, the U.S. Department of Agriculture's EQIP has in fiscal year 2000 only provided $4.35 million of EQIP funding despite the Colorado River Basin Salinity Control Forum's estimate that $12 million is needed annually. Increased federal funding for EQIP would make more monies available nationwide and would make it more likely that Colorado River salinity control would receive the needed $12 million in federal funding. Farmers and ranchers and the Colorado River Basin states share in the costs of implementing the salinity management practices.

It should be emphasized that EQIP is a purely voluntary program and one of the factors considered for funding is the expected number of producers who will participate. Participation will only occur if procedures believe it is in their interest to do so. Applications for EQIP funding far exceed the funding available. New environmental regulations are not imposed as a result of receiving the funding.

Position Statement

Resolution 2005-20 *Infrastructure Security Costs*

Federal multi-purpose projects and delivery systems were authorized by Congress to provide a wide range of significant benefits to millions of citizens in the United States and elsewhere, including: Navigation, Flood Control, River regulation, Interstate and international compact water deliveries, Irrigation, Municipal water supply, Power generation and transmission, Economic development, Lake and stream recreation, Blue ribbon trout fisheries, Fish and wildlife propagation and mitigation. State, regional and local water projects and delivery systems also provide a similar range of significant benefits to citizens in the United States. Increased security costs at these facilities are not normal operation and maintenance activities. They are costs related to national security and the protection of life, property, health and safety of millions of citizens living near and benefiting from these facilities. These costs are incurred in the national interest and are, logically and fairly, a national obligation.

Position Statement

Resolution 2005-21 *Administration of Pre-FLPMA Rights-of-Way for Water Facilities*

The adoption of the Act of July 26, 1866 by the Congress of the United States did not require approval from the Bureau of Land Management (the agency then charged with the administration of federal lands) to cross federal lands with water conveyance structures if the person desiring to cross the federal lands had a vested water right. *Utah Power & Light Co. v. United States*, 243 U.S. 389 (1917). In legislation known as the 1891 Act, Congress required an applicant to file a map and show that a water right had been, or would be, granted to recognize the right-of-way across federal lands. *Utah Power & Light Co. v. United States*, *supra*, 243 U.S. at 406-07. Under the Act of 1901 passed by Congress, the Department of Interior was authorized to require applicants who applied for a right-of-way permit to establish that the granting of a right-of-way was in the public interest. In 1976, Congress passed the Federal Land and Policy Management Act (FLPMA) requiring that each right-of-way contain conditions that would "minimize damage to . . . fish and wildlife habitat and otherwise protect the environment." 43 U.S.C. §1765(a). This Act expressly stated that it was not terminating any previously granted right-of-ways, but provided that a holder could consent to a termination and reissuance under the terms of FLPMA. 43 U.S.C. §1769(a). The Bureau of Land Management (BLM) and United States Forest Service (USFS) have interpreted FLPMA to apply to right-of-ways issued prior to 1976 unless the imposition of conditions would diminish or reduce any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then-existing statute shall apply. 43 C.F.R. §2801.4. Under this interpretation, BLM decided generally not to impose conditions on the operation and normal maintenance of rights-of-way used for water diversions and conveyance, arising under the Act of 1866 unless those activities "significantly altered the alignment or relocation of the facility. . . ." In a complaint entitled *Western Watersheds Project, et al. v. George Matejko, et al*. filed in the United States District Court for the District of Idaho, Civil Case No. 01-0259-E-BLW, the plaintiffs challenged the policy decision of the BLM to not impose conditions on the normal operation of diversion facilities on rights-of-way arising under the Act of 1866, which plaintiffs claim constituted agency "action" which triggered the consultation requirement of Section 7(a)(2) of the ESA. The BLM responded that the ESA is inapplicable, as there was no agency "action" and there was no duty to consult. In a Memorandum Decision and Order of the Honorable B. Lynn Winmill, Chief Judge of the United States District Court for the District of Idaho, it was held that an agency decision to ignore actions by others that may affect a listed species under ESA, constituted "action" requiring consultation under Section 7(a)(2) of the ESA. It is clear that this decision by the United States District Court of the District of Idaho was issued for the sole purpose of controlling the diversion and use of water of a state under a water right issued by the state. The court rejected the argument of BLM that it had not regulated the diversions because they arose under the Act of 1866, which did not give the BLM the authority to approve the diversions or require permits for their operation; hence it has taken no "action" that would trigger application of the ESA. It is clear that the sole

purpose of the consultation under ESA would be to control the diversions of water under a duly issued water right, and not to address the effects of the right-of-way on fish and wildlife habitat and the environment, as compared to the effects caused by the use of said right-of-way.

This is another instance where the courts have interpreted the Endangered Species Act in a manner as to cause federal agencies to take action to curtail or eliminate lawful water diversions within a state, by controlling the diversion and conveyance facility, rather than taking the direct and appropriate approach that the ESA and prohibitions therein should be enforced against the alleged perpetrator of any alleged violations of the prohibitions against "take" or "injury" to an endangered species, which at least will provide the alleged perpetrator the right of due process in defending such claimed violation.

Position Statement

Resolution 2005-22 *Liability for MTBE and Perchlorate Contamination*

Increasingly, our nation's water resources are being put at risk by the presence of manmade chemicals in the environment. To one degree or another, ground and surface waters in every state have been adversely affected by such chemicals, which are often released into the environment through negligence or mismanagement

Two chemicals that have gained prominence in recent years are MTBE and perchlorate. MTBE is an oxygenate added to gasoline to improve performance and reduce air emissions. It is also a suspected carcinogen. Perchlorate is used in the manufacture of munitions, explosives, fireworks and accelerants. Perchlorate is suspected to adversely affect the production of thyroid hormones if ingested. MTBE and perchlorate have been detected in numerous water supplies throughout the country, in some cases forcing the temporary or permanent closure of drinking water wells.

A number of civil suits have been brought against the manufacturers and users of MTBE and perchlorate in an effort to recoup monies expended in dealing with the impacts associated with these chemicals. However, attempts have been made to legislatively exempt these entities from liability. For example, the DOD has repeatedly sought to exempt perchlorate from the provisions of CERCLA, via amendments to the annual National Defense Authorization Acts. Likewise, oil companies are seeking a retroactive, blanket waiver of liability for MTBE via the proposed energy legislation.

Although remediation of MTBE and perchlorate is occurring under a variety of federal, sate and local regulatory programs, the ability to commence a civil action against the manufacturers and users of these chemicals represents an important tool to ensure that the impact of MTBE and perchlorate are fully addressed.