

*National
Water
Resources
Association*

For the 115th Session of
Congress

*Mission Statement
Objectives
Resolutions
Position Statements
Of the Policy Development Committee*

Adopted by the Board of Directors, November 2016

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MISSION STATEMENT

Promote the best use of the water resources of the nation for the benefit of our people and environment.

OBJECTIVES

Promote the following principles of water management.

- The inherent right and obligation of the people of all states to fully develop their water resources within the framework of applicable interstate compacts and the water laws of the respective states.
- Integrated and multiple utilization of water development projects.
- Authorization of and adequate appropriations for projects to develop, control, conserve and utilize total water resources.
- 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.

Research and public information programs

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.

Compliance with State Laws and Interstate Compacts

The federal government, its agents, employees, licensees and permittees shall comply with all applicable state laws and regulations and interstate compacts 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.

Use of reclamation project water for generation of hydroelectric power.

The development of current and projected reclamation programs using the sale of power and energy to assist in paying for the reclamation project in conformance with the authorized project purposes. 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.

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 existing water user facilities or water storage or diversion facilities shall be excluded from wilderness, national monument or national conservation area 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.

Pre-FLPMA Rights-of-Way for Water Facilities

Each federal department responsible for federal lands shall honor valid existing rights-of-way created prior to the passage of the Federal Land Policy and Management Act consistent with the terms of the applicable grant.

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:

- Reduce erosion and transported sediment thereby stabilizing stream conditions and improving water quality;
- Improve efficiency of water deliveries to downstream users;
- Decrease flood hazard to improved areas thereby protecting developed lands adjacent to river channels and other improved areas;
- 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 overdesign 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:

- Fairly and equitably applies to all water users and recognizes and embodies the principles of Reclamation Law;
- 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;
- 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
- 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 rejects 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.

RESOLUTIONS

1. Resolution of Resource Conflicts

That the Secretary of Interior establish a policy 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, acquiring real property, or taking positions in litigation or taking any other actions that would be inconsistent with state law and state water policy.

Further, when the interests in real property that have been contributed or acquired 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.

2. 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.

3. Ground Water Management and Protection

To urge the United States to ensure the primacy of the states as to the ownership, administration and management of the groundwater found within their borders, consistent with international treaties, interstate agreements and judicial decrees.

4. 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.

5. 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.

6. Wilderness and Roadless Areas

To urge:

1. That Congress amend the Wilderness Act, the Federal Land Management Policy Act, the Wild and Scenic Rivers Act and the Antiquities Act of 1906, 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, within a designated national monument or within a national conservation area 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 or as a national conservation area 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 Act of Congress funding any area as part of a national monument or national conservation area provide that no administrative designation, no provisions of the Act or any other Act of Congress designating areas as national monuments or national conservation areas, 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 a national monument or national conservation area;
6. That any proposed and/or designated wilderness, national monument or national conservation area allow access necessary to build and to subsequently maintain water user facilities located within the wilderness, monument or national conservation area and necessary to place to beneficial use previously decreed water rights;
7. That any water user facility within a wilderness, national monument or national conservation area, having been in existence and operation prior to the wilderness, national monument or national conservation area 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, national monument or national conservation areas with modern construction equipment, including, but not limited to, mechanized equipment; and,
8. That any renovation and updating request of such facilities automatically include the permit to accomplish the necessary work.

7. 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 of Reclamation. 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

- a. 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.

8. 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.

9. 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 should not use water quality, land management, navigation, endangered species or other laws, directly or indirectly, establish and maintain instream flows, bypass flows or releases in a manner that is contrary to or disregards 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 of the United States or decrees of the Supreme Court, or that impair, injure or abrogate vested contractual rights to the use of water.
3. No federal agency action shall indirectly or directly impair or prohibit the diversion, transportation, storage, exchange or release of water duly appropriated under state law.

10. 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. 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.
4. 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.
5. The concept of “navigability” as currently in the Act must remain intact, with the continual recognition of (i) the constitutional and statutory limitations on the scope of federal jurisdiction and (ii) due deference to state and local authority.
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 the Clean Water Act whose purpose is the elimination of pollutant discharges to the waters of the United States.
9. The Association urges the Congress, in any amendments to the Federal Water Pollution Control Act of 1972, where the federal jurisdiction over surface waters of the U.S. is changed, to adopt a definition of “waters of the U.S.” as set forth in 40 CFR 122.2.

11. Safe Drinking Water Supplies

To urge Congress and the Environmental Protection Agency to:

1. Consider both the risk posed to human health and the cost to communities for compliance when setting safe drinking water standards.
2. Expedite the CCL review process so regulatory decisions can be made in a timely manner by:
 - a. Supporting national and regional occurrence data-gathering projects and epidemiological studies; and
 - b. Supporting research programs on health effects of proposed contaminants.
3. Fully fund the Safe Drinking Water Act Revolving Fund without relying on new taxes and fees.
4. Ensure all communities have access to safe drinking water by providing more financial assistance to small systems.
5. Support research programs on treatment technologies to reduce treatment costs and speed the development of new technologies.
6. Ensure the delivery of a safe and reliable water supply through appropriate agency oversight of security within drinking water facilities.

12. Invasive Species

To urge Congress and the Administration to develop a national policy to address the impacts of invasive species on water resources and natural ecosystems by supporting programs to:

1. Establish a national effort to provide improved coordination among the Departments of Interior, Agriculture, Commerce, EPA, the Army Corps of Engineers, and other federal agencies to prevent the introduction of invasive species and provide for their control, with a goal to minimize the economic, ecological, and human health impacts caused by invasive species.
2. Modify and strengthen existing laws to protect the import, transport, and introduction and cultivation of potential invasive species.
3. Provide funding, technical assistance and establish working partnerships with states, regional and local governments, and individual landowners in programs of education, detection, monitoring, control, eradication, and restoration of invasive species.
4. Continue research into early detection and rapid response and into cost-effective control and eradication methodologies.
5. Develop, as a high priority, an Invasive Mussel Control Plan for Western States to rapidly detect, monitor, and stop the spread of quagga and zebra mussels.

13. Hydroelectric Power Qualifies as Renewable Energy

Congress should recognize hydroelectric power as a qualifying renewable energy for the purposes of national energy policy and legislation.

14. 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, e) 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;
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 and 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.

15. 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 and instream quality and quantity, including maintenance of the aquatic ecosystem; maintain the irrigation return flows exemption from treatment as a point source.
4. “Waters of the United States” - EPA and the Corps of Engineers shall not redefine or reinterpret the definition of “waters of the United States” under the Act so as to expand the number of waters subject to federal jurisdiction beyond those historically subject to oversight under the Commerce Clause and Supreme Court decisions regarding the Act.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. 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.
14. The point source discharge permit provisions of section 402 of the CWA should not be triggered by either:
 - a. 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
 - b. the application of herbicides or pesticides for their intended use in accordance with label directions.
15. 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.
16. 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 interpreted 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 - Simplified procedures for state program delegation should be adopted, certain categories of water such as headwaters, isolated waters and certain intrastate waters should be excluded from permit requirements

consistent with the original intent of congress; 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
 - i. The EPA and Fish and Wildlife Service must establish guidelines which provide objective mitigation criteria; allow premitigation; defer to the Corps in matters of engineering, economics and other technical areas within their expertise.
 - ii. EPA and the Corps should adopt guidelines for implementation of the 404 program which expedite the application review process, clarify the jurisdictional authority of the agencies in a manner consistent with the language of the Act and Supreme Court interpretations thereof, and minimize the costs associated with permit application review.
- 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.
17. 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.
18. 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.
19. 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.
20. 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.

16. 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 millions of consumers.

Dams provide significant regional and national benefits, including:

1. Municipal, agricultural and industrial water supply
2. Clean, renewable hydropower
3. Flood control
4. Navigation
5. Recreation and fishery benefits
6. 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.

17. 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.

18. 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 U.S. 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.

19. Low Impact Hydropower Generation Exemption

That Congress pass legislation that exempts water providers seeking to implement low impact power generation sites at multiple places throughout the providers' service area from Section 1 of the Federal Power Act. Water providers seeking to implement multiple low impact hydropower generation currently must undergo costly and time consuming exemption or licensing processes through FERC. Streamlining the exemption process still does not bring the cost down to justify the expense of low impact hydropower generation. An exemption from the Federal Power Act from licensing or exemption processes will allow low impact hydropower to become a reality and contribute towards renewable, green energy

20. 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.

21. 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.

22. 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."

23. Policy on Addressing Impacts of Potential Climate Change

To urge Congress and the Administration to consider effects of potential climate change in all actions impacting water resources management and planning to maximize the continued reliability of water supply.

24. Water Infrastructure Financing

To urge Congress to develop a comprehensive national policy on water infrastructure financing using, as its foundation, the following seven (7) criteria:

1. New or modified financing programs should adhere to the “cost causation” principle, i.e., they who cause the cost pay for it and all resulting associated costs.
2. New financing programs should not compete with existing programs for appropriations.
3. New or modified financing programs should be available to both existing and new projects and programs.
4. New or modified financing programs should allow for (1) 100% federal funding, (2) federal and non-federal loans, grants and other financing tools, (3) any combination of federal and non-federal financing, and (4) 100% non-federal financing.
5. New or modified financing programs should be structured so as to make them available to non-federal operators of federally owned infrastructure in a manner comparable to financing available to operators of non-federal facilities.
6. New financing programs should provide funding based on economic viability rather than arbitrary minimum or maximum funding limits.

New or modified financing programs should provide streamlined, efficient and effective processes for considering funding proposals in a manner designed to facilitate the application and/or approval process while maintaining fiscal management requirements.

POSITION STATEMENTS

1. 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 U.S. 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 of Reclamation 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 FWS and agencies seeking water resource development throughout the nation.

At the direction of the Texas Legislature, the Texas Water Development Board (TWDB) is responsible for the development of the State Water Plan. Pursuant to Senate Bill 1 of the 75th Texas Legislature, the State Water Plan is developed through the deliberations and actions of 16 regional water planning groups, each of which is comprised of representatives of 11 stakeholder groups including municipalities, environmental interests, and the public. Once adopted at the regional level, each of the 16 regional water plans is approved as to compliance with TWDB rules and state law and becomes a part of the State Water Plan for meeting projected water needs for the next half century.

The Fastrill Reservoir project on the Neches River is a planned water supply source for the City of Dallas and the Upper Neches River Municipal Water Authority (UNRMWA). The state planning region in which Dallas is located made Fastrill Reservoir the only new reservoir recommended to meet projected water needs for Dallas within the planning horizon. The state planning region in which the Fastrill Reservoir site is located identified Fastrill Reservoir as an alternative water supply for UNRMWA. Both of these regional water plans were deemed consistent with one another, approved by the TWDB in early 2006, and are included in the 2007 State Water Plan.

Unfortunately, an action of the FWS unilaterally set aside decisions made through a public and legislatively-mandated process in Texas. On June 11, 2006, the Director of FWS approved a Finding of No Significant Impact (FONSI) establishing the Neches River National Wildlife Refuge on one of 14 Priority 1 sites identified in the Texas Bottomland Hardwood Preservation Program. The majority of this refuge lies within the proposed conservation storage pool of Fastrill Reservoir and, once lands are accepted or acquired by the United States, development of this reservoir will be effectively precluded.

If donated lands are accepted or real property is acquired 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 supply reservoirs and waterfowl cannot coexist and that room cannot be found around reservoir sites or at alternative locations for preservation of some bottomland hardwoods.

For the foregoing reasons, it is suggested that the Secretary of Interior establish a policy 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 policy should prevent federal agencies from accepting contributions of interests in real property, acquiring real property, or taking positions in litigation or any other actions that would be inconsistent with state law and state water policy.

2. 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.

3. Groundwater Protection and Management

State primacy should be respected by all federal agency claims to the ownership, administration and management of groundwater located within each individual state's boundaries. For example, in 2014, the United States Forest Service proposed to establish

policy regarding groundwater contrary to state water rights. The public should be given ample opportunities to be fully informed and heard.

The NWRA fully supports local and state groundwater agencies and associations in their efforts to conserve, manage and administer the groundwater within their respective areas. Additionally, the NWRA fully supports the use of conservation measures, including groundwater storage, aquifer recharge programs, water reuse and public education practices, recognizing that claims to the appropriation of groundwater in some regions of the western United States now far exceed the available resource.

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:

1. 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.
2. The Environmental Quality Incentives Program should allow for the lease or buy-out of water rights in state-targeted priority areas on a willing-seller basis to reduce water table declines. Moreover, the program should allow for multi-year contracts to effect program goals.
3. Federal financial support for groundwater should additionally be made available to states through block grant methods rather than exclusively through existing or new federal agencies/entities.

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.

4. 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.

5. 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 times 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.

6. Wilderness and Roadless Areas

Federal reservations, including wilderness designations, are subject to valid existing rights. The statutes creating these designations routinely acknowledge this fundamental legal principle. Rights of access to water supply facilities fall within the scope of valid existing rights.

In addition, the proponents of wilderness designation often acknowledge other vested interests and long-standing historical uses, such as livestock grazing, when seeking support for legislation during the hearing and review process prior to enactment.

The status of these historical interests and rights loses support after the wilderness bills become law, but these interests and rights have no less value to the American public or to those who have developed these rights by use and perfection over many decades.

The Wilderness Act established criteria for areas to qualify as wilderness. The designated area should be “untrammeled by man, ... retaining its primeval character..., without permanent improvements or human habitation, ... with the imprint of man's work substantially unnoticeable, [and with] outstanding opportunities for solitude or a primitive and unconfined type of recreation” and should have “at least five thousand acres of land or [be] of sufficient size as to make practicable its preservation and use in an unimpaired condition.” These standards have eroded over time under pressure from special interest groups who have a narrow focus on recreation or on preventing productive human use of publicly owned lands. As a result, Congressional designations have enlarged the areas considered for wilderness protection far beyond those that truly met these standards. Consequently, many areas contain permanent improvements expressly developed to support water rights, grazing rights and other historical uses of the federal lands.

Because most wilderness has been inventoried in the western United States, actions that interfere with or prevent the exercise of historic interests and rights on these lands affects the vested interests of westerners, principally in the states that are members of the National Water Resources Association. These designations, as carried out, restrict the use of these lands for water and other resource development.

Federal administrative agencies should not abandon the fundamental principles of law necessary to ensure the proper management of the public domain, whether under the purview of the United States Forest Service, the Bureau of Land Management, the National Park Service or other federal agencies managing lands that may be subject to these designations and uses. The proper and fair applications of the rule of law, as set forth in wilderness designations, should respect valid existing rights and historic uses and should not prevent the appropriate use of federal lands for water and energy development to meet the needs of the people.

7. 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.

8. 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:

1. 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.
2. 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.
3. 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:

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

2. Voluntary water transactions can be accomplished without diminution of service to the water users of the project.
3. 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 (BOR) 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 BOR’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:

1. 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.

2. 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.
3. 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.
4. Under policies governing transfers of project water, the Bureau seems to be 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.
5. Reclassification of land does not alter the nature and use of water.
6. 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.

9. 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.

These assumptions have resulted in attempts to alter the operation of the federal Columbia River power system, in biological opinions issued by NOAA that 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, by EPA's finding that

minimum streamflows can be required for water quality purposes in a draft study under the 1977 Clean Water Act despite clear language that prohibits impairment of the state water allocation system. Also, 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 has attempted to establish reserved water rights for channel maintenance and sediment transport.

These examples demonstrate that the federal government has used federal law to affect water allocation and management by regulatory means that in many cases is inconsistent with state water laws. Any attempt to condition, restrict, or prohibit the appropriation, storage, carriage and consumptive use of water through regulation under federal environmental laws must be consistent with and take into account state water law. It is urged that the present Administration continue to support a strong system of water allocation and management by the respective states.

10. Clean Water Act Reauthorization

In any clarifying amendments to the Federal Water Pollution Control Act of 1972, federal jurisdiction over surface waters of the U.S. should not be expanded. Any definition of “waters of the U.S.” added to the Act should be consistent with the language set forth in 40 CFR 122.2

Congress should ensure that irrigated agricultural conveyance systems are not considered to be “waters of the U.S.” and that traditional irrigation canal and drainage system management practices can continue free of federal oversight.

Congress should preserve the existing limited exemptions from NPDES permitting provided by Section 402(l) of the Clean Water Act by reaffirming that discharges composed of irrigation return flows and discharges of storm waters not subject to permitting under Section 402(p) of the Act are exempt.

During Congressional debate on any CWA amendments, there should be assurances that the provisions of Sections 101(g) and 510 of the Act remain in force.

11. 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. EPA should honor SDWA timetables so that proposed contaminants don’t linger on the candidate list and provoke congressionally mandated drinking water standards.

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 near RCRA, in cooperation with state and local agencies.

Perchlorate has been detected in a number of groundwater supplies in California and in Colorado River supplies in the lower basin. 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.

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 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 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.

12. Invasive Species

The westward spread of plant and animal species imported from other continents and ecosystems is becoming an ever more serious problem. These species disrupt ecosystems, damage water facilities, deplete water supplies, and create burdens for struggling native species that depend on the aquatic and terrestrial ecosystems for their survival.

Many of the invasive species that are causing substantial damage were imported for ornamental landscaping, as a result of international commerce, from recreational activities, or by accident. Often this introduced species thrives and multiplies in this new habitat where it has fewer disease or natural limiting factors, to the detriment of the native species or ecosystems. In addition to the environmental damage, these invasive species can impose enormous costs to control or eradicate.

The quagga and zebra mussels have the potential to damage the entire water delivery system in the western United States. Invasive mussel infestations clog pumps and pipes costing millions of dollars in increased maintenance needs. Hydropower and water delivery infrastructure and recreation facilities face added operating burdens imposed when these invasive species drain footholds in the water systems.

Invasive non-native plant species like Arundo, Giant Salvinia, Hydrilla, Phragmites, Russian Olive, and Saltcedar choke waterways, reduce flood carrying capabilities, alter riparian morphology and soak up scarce water supplies, all to the detriment of native species. These invaders undermine ecosystem protection and restoration in sensitive watersheds throughout the west, such as the Sacramento and San Joaquin Bay-Delta in California and the central Rio Grande in New Mexico.

A national effort is needed to address the serious and growing problem of invasive species, including early detection, monitoring, education, control, and eradication programs for newly arrived invaders and for established invaders. A large research effort is needed to better quantify the impacts of invasive species and develop more effective control technologies.

The Department of Interior, and all federal agencies, should act immediately to contain and combat the introduction and spread of these species by providing funding and support for a regional response. Recreational users should be educated and, where possible, should bear the costs associated with the burdens they create.

13. Hydroelectric Power Qualifies as Renewable Energy

Congress has enacted energy legislation that provides financial incentives for new and upgraded renewable energy projects due to increasing concern for the nation's energy security and for reducing carbon-based energy production. To date Congress has not included hydropower generation as eligible for these incentives. Hydropower is an efficient, cost-effective, renewable and clean energy generation source that already accounts for approximately 12% of the nation's energy supply and nearly 80% of the nation's total renewable electricity generation. Hydropower is a non-polluting form of electricity generation. The National Hydropower Association estimates that more than 160 million tons of carbon dioxide emissions were avoided in the United States in 2004 because of hydropower generation in the United States.

Hydropower is a clean, reliable, and affordable renewable energy source that serves as a key component in our national environmental and energy policy objectives. It is time Congress recognized that hydropower is renewable, and emissions-free. At a time when there are growing concerns about the impacts of climate change, we need to find energy sources that will help curb greenhouse gas emissions without stifling the economy.

Hydropower should be recognized as a renewable resource similar to wind and solar. Hydropower generation actually complements generation from these alternative renewable sources. With their unique ability to follow electricity demand, hydropower facilities can firm up the load carrying capacity of renewable generators that need help compensating for their problems with intermittency. Hydropower generation can be the perfect partner for less predictable renewable resources such as wind and solar generation. In fact, many utilities rely on hydropower assets to turn the variable output of wind power into a more dependable resource.

Despite assumptions in some quarters that hydropower is a mature or “tapped out” technology, significant new potential for hydropower exists. Additional capacity exists at many current hydropower facilities. Incentives to encourage efficiency improvements and capacity upgrades at existing hydropower facilities would increase our nation’s renewable energy supply. Congress took steps in the Energy Policy Act of 2005 and recent tax extender legislation to authorize production tax credits (Production Tax Credit) and tax-credit bonding authority (Clean Renewable Energy Bonds) for incremental hydropower. Many utilities are working to increase the efficiency of their current assets. Currently, the federal government is also studying the potential for increasing electric power production capability at federally-owned water regulation, storage and conveyance projects.

There are also new, undeveloped sites for hydropower generation. The Energy Policy Act of 2005 required the Bureau of Reclamation to submit a report to Congress identifying and describing the status of potential hydropower facilities included in water surface storage studies undertaken by the Department of Energy that have not been completed or authorized for construction. On November 8, 2005, BOR submitted a comprehensive inventory of Western water storage and hydroelectric projects to the U.S. House Committee on Resources and the Senate Committee on Energy and Natural Resources. See the Sec. 1840 BOR report on hydropower.

Finally, while environmental restrictions have stifled large-scale development of hydropower potential in this country, there is significant opportunity with smaller existing hydropower technologies that can play a role in the trend toward distributed generation. Technologies such as the application of micro-turbines to public water systems, storm water systems, and small irrigation canal hydropower should be encouraged by renewable energy legislative efforts.

14. Reauthorization of the Endangered Species Act

In 1973, the United States Congress passed into law the Endangered Species Act (ESA) of 1973 (87 Stat. 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 Colorado pike minnow, the whooping crane, the least tern and the potential listing of eleven freshwater mussel species in Texas 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 the 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.

15. 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 and agencies 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 metal 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.

1. 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.
2. 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.

3. 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.

16. Dam Removal

NWRA strongly 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.

17. Implementation of the Endangered Species Act

1. The implementation of the Endangered Species Act (ESA) should not be used as a device 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.
2. 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.
3. 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.

4. 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).

18. 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 ensure 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.

19. Low Impact Hydropower Generation Exemption

Clean, renewable energy is one of our nation's most important goals in today's society. The federal government, aware of these needs, has implemented several aggressive mandates targeting our independence from foreign fossil fuels. These mandates are summarized in the new Energy Policy Act of 2005 which directs the federal government to increase its renewable energy use, with a goal of using 3 percent or more in fiscal years 2007 through 2009. In the same act, the federal government envisions that our renewable energy will comprise at least 7.5 percent of our total energy production by 2013.

NWRA members recognize the potential to have a role in helping meet the national need for clean, renewable electrical energy. These water providers have identified many potential sites where small hydropower generation units can be installed inside their water delivery systems across the country. These projects do not require additional water to generate power; they rely on the water already being moved through the system for irrigation or domestic use and thus have no new impact on the source of the water. In addition, there is no new impact on the environment since the water delivery structures already exist. Each unit will utilize water gravity flow to generate green energy.

20. 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 ensure 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.

21. 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 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.

22. 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.

23. Policy on Addressing Impacts of Potential Climate Change

Climate change is a matter of public discussion. The causes and impacts of climate change are under debate. There is a consensus among scientists that climate change will affect global temperatures, sea levels, precipitation patterns and other water-related factors.

Water managers and the agencies that affect water management policy should take into account the possibility that climate change could affect patterns of precipitation, snowpack, runoff and related water resource factors.

To minimize effects of reduced or altered water supplies resulting from climate change, the federal government, along with state and local agencies, should plan for enhanced storage and redundancy. They must also consider and implement enhanced capabilities to move water supplies to areas of critical demand in accordance with applicable law and must augment and conserve existing water supplies.

24. Water Infrastructure Financing

The prolonged drought in the arid West, flooding there and in other parts of the country and aging infrastructure have brought home to us the importance of considering water infrastructure financing. It is essential to address the need for new and modified ways of financing new infrastructure and existing infrastructure upgrades, repairs and other improvements. At the same time, new infrastructure needs are being identified because

of these experiences, which needs may not be achievable using only traditional financing methods.

The National Water Resources Association urges Congress and the Administration to develop a comprehensive national policy to address water infrastructure financing that articulates the widest feasible array of options intended to foster both traditional financing and new approaches to attract the necessary funds to implement this policy.

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