

1981
ANNUAL REPORT
OF THE
WESTERN STATES
WATER COUNCIL

Sixteenth Annual Report

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1981
WESTERN STATES WATER COUNCIL
MEMBERSHIP

ARIZONA



*Governor Bruce E. Babbitt
4-78

**Wesley E. Steiner
2-69

Tom Choules
4-70

Robert E. Lundquist
10-78

Larry Deason (Alt.)
3-78

CALIFORNIA



*Governor
Edmund G. Brown, Jr.
1-75

**Ronald B. Robie
7-75

Senator Ruben Ayala
2-78

Robert W. Miller (Alt.)
5-79

William R. Attwater (Alt.)
7-79

COLORADO



*Governor Richard D. Lamm
1-75

**D. Monte Pascoe
4-80

J. William McDonald
10-79

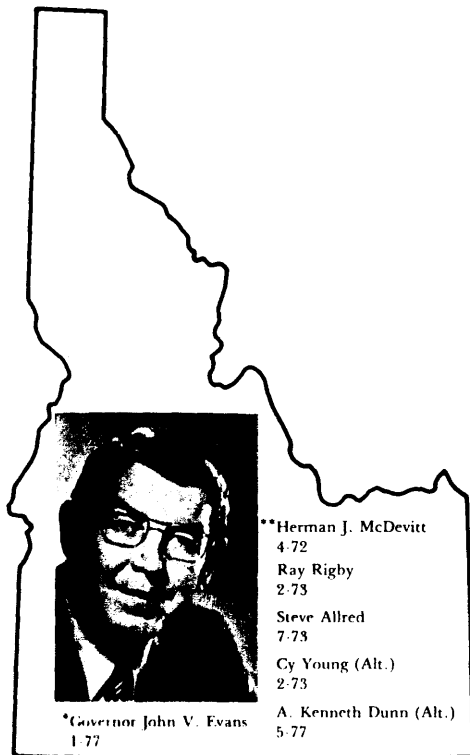
Gary Broetzman
9-80

Jeris Danielson (Alt.)
4-80

Dennis Montgomery (Alt.)
4-80

Marcia Hughes (Alt.)
4-80

IDAHO



*Governor John V. Evans
1-77

**Herman J. McDevitt
4-72

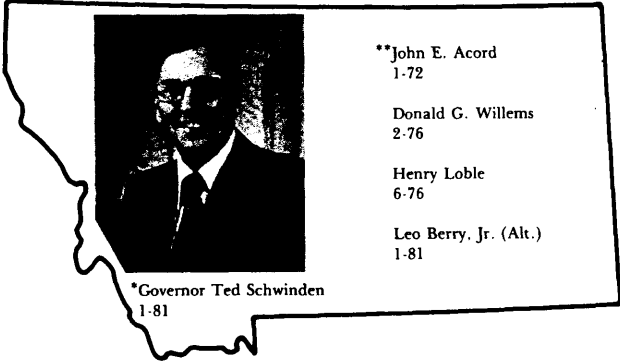
Ray Rigby
2-73

Steve Allred
7-73

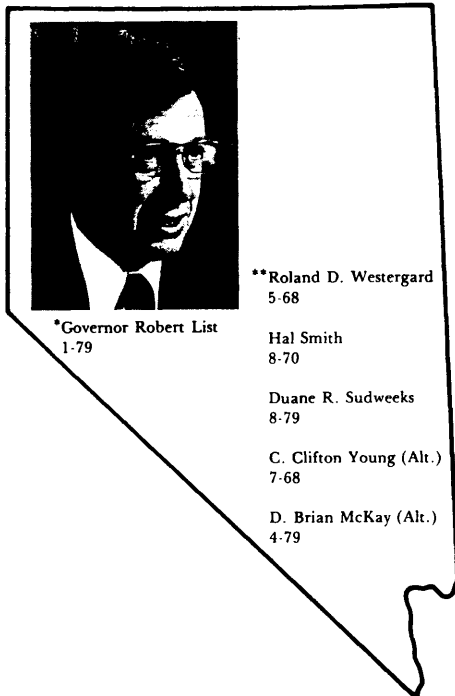
Cy Young (Alt.)
2-73

A. Kenneth Dunn (Alt.)
5-77

MONTANA



NEVADA



NEW MEXICO



*Governor Bruce King
1-79

**S. E. Reynolds
6-65

George Hannett
8-73

Odis L. Echols
11-75

David P. Hale (Alt.)
6-65

OREGON



*Governor Victor Atiyeh
1-79

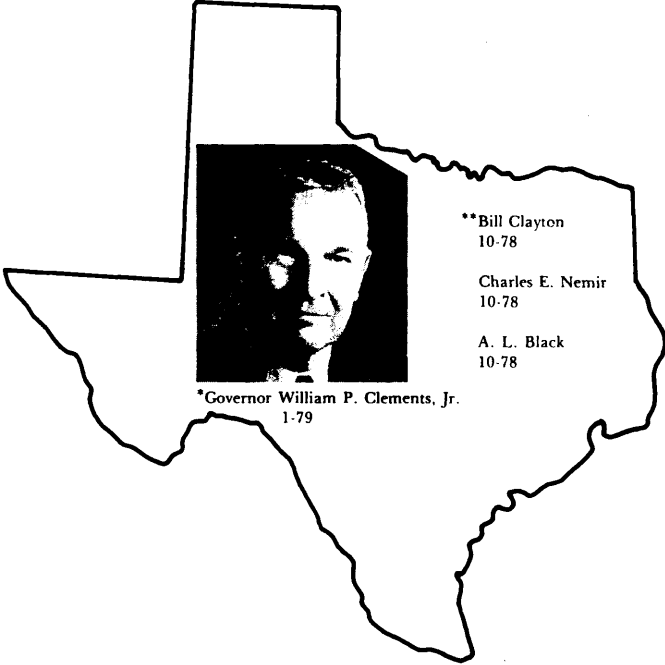
**James E. Sexson
3-79

George Proctor
3-79

William H. Young
3-79

Pat Amedeo (Alt.)
3-79

TEXAS



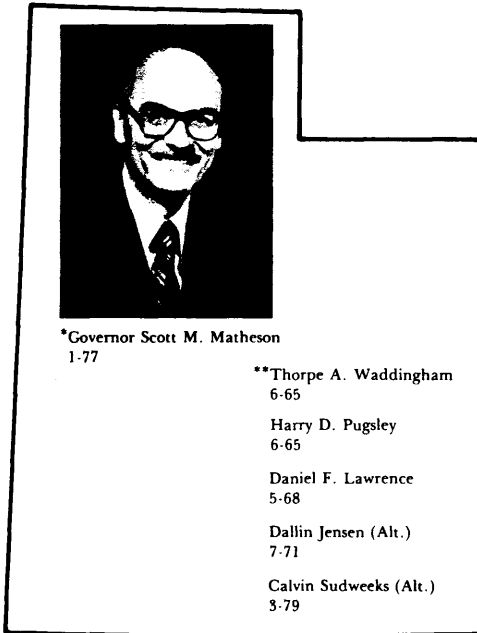
**Bill Clayton
10-78

Charles E. Nemir
10-78

A. L. Black
10-78

*Governor William P. Clements, Jr.
1-79

UTAH



**Thorpe A. Waddingham
6-65

Harry D. Pugsley
6-65


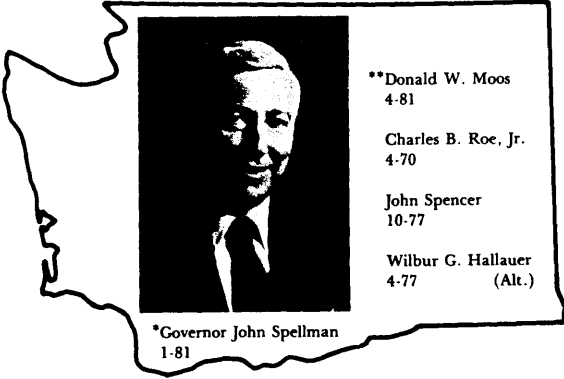
Daniel F. Lawrence
5-68

Dallin Jensen (Alt.)
7-71

Calvin Sudweeks (Alt.)
3-79

*Governor Scott M. Matheson
1-77

WASHINGTON



****Donald W. Moos**
4-81


Charles B. Roe, Jr.
4-70

John Spencer
10-77

Wilbur G. Hallauer
4-77 (Alt.)

***Governor John Spellman**
1-81

WYOMING



****George L. Christopulos**
4-75

Myron Goodson
6-65

Willard C. Rhoads
3-67

***Governor Ed Herschler**
1-75

*Governor Member
**Executive Committee Member

OFFICERS

CHAIRMAN

Charles E. Nemir
7-81
Daniel F. Lawrence
7-80 to 7-81

VICE-CHAIRMAN

Ray W. Rigby
7-81
Charles E. Nemir
7-80 to 7-81

SECRETARY-TREASURER

Roland D. Westergard
7-80
Charles E. Nemir
7-79 to 7-80

The following men have led the Western States Water Council as officers since its inception in 1965:

As Chairman:

Freeman Holmer - Oregon
Raphael J. Moses - Colorado
William S. Holden - Idaho
William R. Gianelli - California
William A. Groff - Montana
Wesley E. Steiner - Arizona
Chris L. Wheeler - Oregon
Donald L. Paff - Nevada
George Christopulos - Wyoming
Daniel F. Lawrence - Utah
Charles Nemir - Texas

As Vice-Chairman:

Raphael J. Moses - Colorado
William S. Holden - Idaho
William R. Gianelli - California
William A. Groff - Montana
Wesley E. Steiner - Arizona
Chris L. Wheeler - Oregon
Donald L. Paff - Nevada
George Christopulos - Wyoming
Daniel F. Lawrence - Utah
Charles Nemir - Texas
Ray W. Rigby - Idaho

As Secretary-Treasurer:

Donel J. Lane - Oregon
Floyd A. Bishop - Wyoming
Daniel F. Lawrence - Utah
Charles Nemir - Texas
Roland D. Westergard - Nevada

The following have served as Executive Director:

Wright Hiatt
Jay R. Bingham
Thomas E. Cahill
Jack A. Barnett
D. Craig Bell

Council headquarters are located at:

220 South 2nd East, Suite 200
Chancellor Building
Salt Lake City, Utah 84111
(801) 521-2800

STAFF

D. Craig Bell Executive Director
Richard A. Smith Staff Engineer
5-81
Anthony G. Willardson Research Analyst
Norman K. Johnson Legal Assistant
Pearl Pollick Office Manager
Joyce Sanchez Report Secretary
1-81
Marjorie Farmer Secretary
10-81
Pamela Dennis Clerk

Fae Drake *Report Secretary*
1-70 to 9-81
Joanne Otterstrom *Secretary*
8-80 to 5-81

1981 ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

The Western States Water Council moved forward in 1981 with determination to accomplish the mission established by the State Governors. The States of Montana and Washington added new Governors to the membership, as reflected on preceding pages. The change in Administration in Washington, D.C. brought new challenges to the membership and staff. Daniel F. Lawrence of Utah served as Chairman from July 1980 to July 1981. Charles E. Nemir of Texas was elected Chairman at the July annual meeting held in Coeur d'Alene, Idaho, July 31, 1981. Also at the July meeting, Ray W. Rigby was elected to succeed Charles Nemir as Vice Chairman. Chairman Nemir asked Roland D. Westergard to continue serving as Secretary-Treasurer, a position he was named to in July 1980 by Chairman Lawrence.

The Western States Water Council was created in June 1965 by Governors meeting at a Western Governor's Conference. The stated purpose of the Council was to accomplish effective cooperation among the participating states in planning for programs leading to integrated development by state, federal and other agencies of their water resources. For 13 years, the Western States Water Council consisted of eleven western states. The State of Texas petitioned for membership and in 1978 was admitted, bringing Council membership to include: ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, TEXAS, UTAH, WASHINGTON and WYOMING. Each member Governor serves on the Council as an ex-officio member. Each member Governor also has the opportunity of appointing three representatives from his state and as many alternates as he deems necessary to serve on the Council at his pleasure. State representatives are appointed to working committees, with one representative per state also appointed to the Executive Committee concerned with housekeeping duties. The working committees are the Legal Committee, the Water Quality Committee and the Water Resources Committee, each concerned with issues as their committee names imply. Each working committee is directed by a committee chairman and vice-chairman. Committee chairmen, in turn, name special subcommittees to study particular areas of concern. In this regard, a subcommittee chairman is designated to guide the action.

Headquarters of the Western States Water Council are in Salt Lake City, Utah. The staff is headed by D. Craig Bell, Executive Director. Working with Mr. Bell is Richard A. Smith, Staff Engineer, who began work with the Council in May of 1981; Tony Willardson, Research Analyst; Norman K. Johnson, Legal Assistant and a secretarial staff of three with one part-time assistant as needed.

Positions taken and resolutions passed at the quarterly meetings of the council appear in this report. Meetings are held on a rotation basis in the member states with state representatives acting as hosts to the Council members and their guest speakers. Meetings were held in 1981 in the following places: Scottsdale, Arizona - January 14-15; Salt Lake City, Utah - April 9-10; Coeur d'Alene, Idaho - July 30-31 and Jackson Hole, Wyoming - October 15-16.

Guests are welcome at the quarterly meetings of the Western States Water Council. Information on the meeting location and agenda items can be obtained by writing or calling Council headquarters. Guest speakers are scheduled according to the relevant subjects to be considered at each quarterly meeting. Guest speakers at the January, Scottsdale, Arizona meeting included Hal Brayman of the Senate Public Works and Environment Committee staff, who discussed the status of water resource development over the past few years, including the backlog of projects and the time delay for completion of those projects. Dan Rosenfelt of the Interior Solicitor's office informed Council members of issues involving Indian water resource development. Arizona's Council member, Wesley E. Steiner, Director of Arizona's Department of Water Resources, reported on the Central Arizona Project and Arizona's new groundwater law.

Ron Kuhlman, Chief of Water Policy for the Bureau of Land Management, reported on a draft document concerning BLM's water rights policy and procedure at the April meeting held in Salt Lake City, Utah. Also reporting at the April meeting was Roberta Savage, Executive Director of the Association of State and Interstate Water Pollution Control Administrators. Ms. Savage told Council members of the status of water quality legislation in the 97th Congress and what they could do to help with the situation.

Dr. Garrey Carruthers, Assistant Secretary for Land and Water Resources, Department of Interior, was the guest speaker at the July meeting in Coeur d'Alene, Idaho. He talked about Water Resources Policy and pledged to the Council to give them every assistance possible during the next four years. Water Resources Legislation in the 97th Congress was presented by Jim Ford, Editor, Congressional Environmental and Energy Study Conference, Washington, D.C. Mr. Ford gave the status of the bills presently before the Congress and his opinion of how they will fare in this Congress. Kenneth Dunn, Council member from Idaho, reported on water project funding in the state of Idaho.

At the October meeting held in Jackson Hole, Wyoming, Robert Broadbent, Commissioner of the Bureau of Reclamation, Department of Interior, spoke to the Council regarding the status of the Bureau of Reclamation. Charles Nemir, Council member from Texas, gave a presentation regarding Financing of Water Resources Development in the State of Texas. Dr. G. Edward Dickie, Economic Advisor to the Assistant Army Secretary for Civil Works, spoke to the Council regarding the Principles and Guidelines in Water Resources Planning, and George Christopoulos, Council member from Wyoming spoke regarding Water Resources in Wyoming. At this meeting also, a Resolution of Appreciation was passed regarding Fae Drake who was Report Secretary for the Council staff. She has taken a medical retirement, but had been with the Council over ten years which was the longest tenure of service of any other staff member.

Following are positions taken and resolutions passed by the WESTERN STATES WATER COUNCIL during 1981.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
CONTRACTING PROCEDURES OF THE CORPS OF ENGINEERS IN RESPONSE
TO WATER POLICY INITIATIVES OF THE CARTER ADMINISTRATION IN THE
AREA OF WATER CONSERVATION.

Scottsdale, Arizona

January 15, 1981

WHEREAS, President Jimmy Carter, as a part of his 13 water policy memoranda of July 12, 1978, issued a memorandum to the Secretaries of Interior, Agriculture, Energy, Army, and the Chairman of the Tennessee Valley Authority - subject "Conservation Pricing of Water Supplied by Federal Projects" - directing them, among other things, to require municipal and industrial users of water from federal projects to develop "water conservation programs" as a condition of new water supply contracts, and to require federal contracting agencies to monitor user compliance with these programs; and

WHEREAS, the Secretary of the Army, in a memorandum dated August 4, 1980 to the Director of Civil Works, Corps of Engineers, directed the inclusion of mandatory water conservation clauses in all new water supply contracts, which action was justified on the grounds that the President's water policies have been publicly reviewed and refined through the work of several federal agencies including the U.S. Water Resources Council; and

WHEREAS, the water conservation policy has been reiterated in the revised Principles and Standards published in December, 1979, despite strenuous objections by the majority of the states, the principal national water associations and organizations, and the Western States Water Council; and

WHEREAS, the revised Principles and Standards constitute guidelines for the planning, evaluation, and formulation of federal water projects and do not constitute national water policy.

NOW, THEREFORE BE IT RESOLVED that it is the position of the Western States Water Council that the Secretary's action does not reflect national water policy, that the proposed mandatory water conservation provisions of federal water supply contracts, like other initiatives of the Carter Administration, constitute a clear intrusion into recognized state and individual rights, that the action represents interference with state water right systems, and that the Secretary of the Army should rescind his directive relative to the inclusion of water conservation clauses in federal contracts.

BE IT FURTHER RESOLVED that the Western States Water Council urge President Ronald Reagan upon inauguration to direct, at the earliest practicable date, a comprehensive review of the thirteen memoranda issued

by former President Carter on July 12, 1978, Executive Order E. O. 12113 relative to the establishment of an independent water project review function within the U. S. Water Resources Council, the revised Principles and Standards, legislation proposed by the former Administration relative to state cost-sharing for federal water projects, and federal agency and departmental internal administrative directives and actions which have been carried out pursuant to the above Carter Administration initiatives. Such a review should have the objective of appropriately rescinding and/or remanding to the Congress those actions which infringe upon state rights and are contrary to the national interest in a sound water resources development and management program.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
GROUNDWATER POLICY
Scottsdale, Arizona
January 15, 1981

WHEREAS, the Western States Water Council (WSWC) recognizes that the welfare of the individual states and the nation is dependent upon the maintenance of adequate supplies of high quality water; and

WHEREAS, programs to ensure an adequate supply of good quality groundwater are, in the view of WSWC, the primary responsibility of the states, and most western states have long recognized that groundwater management programs must assure the protection of groundwater to meet present and future needs; and

WHEREAS, to meet their needs most western states have developed extensive groundwater planning and management programs, and therefore, while WSWC supports a national policy to guide the actions of federal agencies as they administer programs which impact upon groundwater, WSWC does not support and will actively oppose any proposal which interferes with the ability of the states and local governments to carry out their responsibilities in managing the water resources.

NOW THEREFORE, BE IT RESOLVED BY THE WSWC that any national policy to manage and protect groundwater must be based upon the following concepts:

- 1. The states and local governments must continue to have primary responsibility for groundwater management, both quantity and quality. Cost effective programs, many already in existence, can be structured to meet the widely varying groundwater conditions and the varying uses of groundwaters in each state.*

2. *All federal agencies with groundwater responsibilities must be involved in the development and implementation of any groundwater policy. Many times effective state and local programs have been hampered by federal programs administered with little or no coordination through separate federal agencies. Often these federal programs have failed to recognize the interrelationships between quality and quantity and between surface and groundwater.*

3. *The states are willing to cooperate with the federal government regarding development of general groundwater policy, but specific procedural items must be left to the state and/or local government.*

4. *The role of the federal government in groundwater protection should be to provide leadership by fostering ideas, knowledge and methods rather than through penalties and direct enforcement actions. The operation of research and training facilities is cost effective if accomplished nationally or regionally, rather than if each state has its own program.*

5. *National groundwater policy must be flexible enough to recognize the differing legal, hydrologic, climatic, economic, and social factors that exist in the various states and regions. Rigid requirements will be counterproductive when applied nationwide.*

6. *A national groundwater policy should be a joint federal/state effort, while also recognizing the legitimate role of local and regional (interstate) government units. The WSWC supports the concept of keeping government programs at the local level whenever they can be effectively applied.*

7. *A national groundwater policy should build upon the basic state responsibility for groundwater use, management, and protection. Overall groundwater protection and groundwater allocation should be part of a state's general water management program. The WSWC believes there must be comprehensive programs in each state to manage and protect groundwater resources. The WSWC will work with Congress and the Administration in efforts to develop national groundwater policy that will strengthen the states and local ability to manage and protect groundwater resources.*

POSITION STATEMENT
of the
WESTERN STATES WATER COUNCIL
concerning
SECTION 404 OF THE CLEAN WATER ACT
and
SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899
Scottsdale, Arizona
January 15, 1981

Section 404 of the Clean Water Act should be amended as follows:

*No permit authorized under this section may be denied or conditioned for any reason other than that the discharge of dredged or fill material would not comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A permit may not be denied nor conditions required therein for any reason based on the effects of diversion, storage or consumption of water. **

*The same approach should be applied in amending Section 10 of the 1899 Rivers and Harbors Act. **

Section 404 should also be amended to provide for effective assumption of the 404 program by the appropriate state or interstate entity. Furthermore, the Corps of Engineers should make the decision on whether or not to approve a state proposal for assumption of the 404 permit program and should promulgate regulations providing criteria for approval.

Such criteria should state general provisions which must be met. The regulations should leave full flexibility to the states in designing and implementing the programs. Once the program has been assumed, concerned federal agencies should have the right to comment on any permit application but no federal agency could deny a state permit. Any commenting agency could challenge the permit in court if it believes that the action is contrary to the law. Additionally, approval of the state assumption could be withdrawn by the Corps if the program is not operated in compliance with the regulations.

Actions which should be taken to meet the above goals include repeal of the Consolidated Permit Regulations as they affect the 404 program and repeal of subsections 404 (j)-(m).

**California voted against adoption of these two paragraphs of the resolution and abstained from voting on the remaining paragraphs of this resolution.*

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
THE WATER RESOURCES PLANNING ACT
Scottsdale, Arizona
January 15, 1981

WHEREAS, the Western States have been leaders in water resource planning efforts and have been actively involved in various aspects of the administration and implementation of P.L. 89-80; and

WHEREAS, the Western States Water Council believes that in the 15 years since the enactment of the Water Resources Planning Act, the Act has had limited effectiveness and fallen short of its goals; and

WHEREAS, Congress has failed in the last two congressional sessions to act on significant questions involving all three titles of the Act, leaving the states uncertain as to the future of the Act's programs; and

WHEREAS, water resource planning needs and conditions have substantially changed, and in many respects are more urgent today than they were at the time of the enactment of P.L. 89-80 in 1965; and

WHEREAS, the legislation which had been introduced and was pending when the 96th Congress adjourned is unacceptable to the Western States Water Council in certain regards.

NOW THEREFORE BE IT RESOLVED that it is the position of the Western States Water Council that there should be a searching reexamination and reevaluation of the Act, including the role, purpose, and functions of the Water Resources Council, the river basin commissions, and the Title III program before action is taken on any legislation concerning the same in the 97th Congress.

BE IT FURTHER RESOLVED that the Western States Water Council urges Congress to undertake such reexamination and reevaluation of P.L. 89-80 during the current session and that the Western States Water Council offers its assistance to Congress in this effort, including the drafting of legislation needed to amend and/or replace P.L. 89-80.

POSITION
of the
WESTERN STATES WATER COUNCIL
concerning
IMPROVING STATE-FEDERAL RELATIONS
Scottsdale, Arizona
January 15, 1981

BE IT RESOLVED that the Western States Water Council act as a catalyst to improve state-federal relations relating to water resources by instructing the Director and staff to cooperate and coordinate with the Secretary of Interior, James Watt; Chief of the Corps of Engineers; Administrator of EPA and all other departments and agencies dealing with water resources, as one means, to accomplish such improvements.

BE IT FURTHER RESOLVED that the Director inform the departments and agencies of the Council's interest in this matter.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
THE ENDANGERED SPECIES ACT
Salt Lake City, Utah
April 10, 1981

WHEREAS, the Western States are actively planning and managing their water resources to effectively meet the rapidly increasing water needs of a growing population; and

WHEREAS, meeting those water needs is essential to the achievement of many national goals; and

WHEREAS, implementation of the Endangered Species Act as previously constructed and interpreted has resulted in delays and cost increases, which have thwarted effective state water resource development and threaten to continue to do so; and

WHEREAS, implementation of the Act, as previously constructed and interpreted, also interferes with the sovereign right of the states to control the appropriation and administration of water resources for beneficial uses.

THEREFORE, BE IT RESOLVED, that the Western States water Council request that the Congress of the United States carefully reconsider the provisions of the Endangered Species Act, and expeditiously enact amendments to allow the flexibility necessary to facilitate the balancing of important national goals.

BE IT FURTHER RESOLVED, that the Western States Water Council also urge Interior Secretary Watt to promptly review relevant departmental procedures and regulations for implementation of the Act to allow to the extent the Act permits, the flexibility necessary to facilitate the balancing of important national goals.

BE IT FURTHER RESOLVED, that the Western States Water Council pledges its resources of staff personnel and Council members to cooperate with the Congress and the Executive Branch in submitting positive recommendations for an amended Act.

POSITION
of the
Western States Water Council
concerning
DEPARTMENT OF THE INTERIOR'S PROPOSAL FOR REGULATION
OF RESERVED WATERS ON INDIAN RESERVATIONS
(Federal Register, January 5, 1981)
Salt Lake City, Utah
April 10, 1981

WHEREAS, the Department of the Interior, on January 5, 1981, proposed regulations to encourage Indian tribes to adopt water codes governing federal Indian reserved rights created by the United States; and

WHEREAS, the proposed regulations clearly appear to exceed the lawful scope and delegation of authority granted to the Secretary of the Interior under 25 U.S.C. 381 and said regulations are beyond the power of the Secretary of the Interior to promulgate; and

WHEREAS, even if the proposed regulations were within the Secretary's power to promulgate, the Secretary's power to transfer or delegate that power to Indian tribes is uncertain; and

WHEREAS, the proposed regulations contain interpretations of the nature and scope of the federal Indian reserved rights doctrine which are not only unsupported by but in some cases are indirect conflict with the pertinent court decisions; and

WHEREAS, the proposed regulations announce executive policy that has no basis in law, and is in direct conflict with the goal of respecting state water rights and state management of water resources; and

WHEREAS, the proposed regulations promote concepts of Indian inherent sovereignty that are not only beyond the scope of these regulations but are contrary to sound national policy.

NOW THEREFORE BE IT RESOLVED by the Western States Water Council that the Secretary of the Interior withdraw the regulations proposed for adoption on January 5, 1981.



WESTERN STATES WATER COUNCIL

220 South 2nd East / Suite 200 / Salt Lake City, Utah 84111 / Phone (801) 521-2800

April 15, 1981

The Honorable James G. Watt
Secretary of Interior
Interior Building
Washington, D.C. 20240

Dear Secretary Watt:

Member states of the Western States Water Council have reviewed the proposed rules published on January 5, 1981, concerning regulation of reserved water on Indian reservations. We believe we should bring to your attention that the proposed rules would represent a departure from President Reagan's goal of respecting state water rights and state management of water resources. For the following reasons, the Western States Water Council urges the Department of the Interior to withdraw the proposed rules.

First, we question the Secretary's authority to promulgate the proposed rules. When the original version of the rules was published in 1977, one of the most prevalent criticisms was this lack of authority. When the proposed rules reappeared on January 5th of this year, the only additions to the provisions cited as supportive of the secretary's authority were 25 U.S.C. 415 and the "inherent authority of Indian tribes within their reservations." These citations add no substance to the claim for the Secretary's authority.

We are especially perplexed by the juxtaposition of the paragraphs (a) and (b) of §260.2 - "Purposes of the proposed rules." Paragraph (a) lists the purpose of "...implement(ing) the Secretary's statutory authority to promulgate regulations necessary to secure a just and equal distribution of reserved waters on Indian reservations for irrigation or agricultural purposes," while paragraph (b) lists the purpose of "...defer(ing) to and assist(ing) in the exercise of the inherent authority of Indian tribes within their reservations to govern the use of all water rights reserved for Indians therein." Paragraph (a) enumerates the only express statutory authority of the Secretary over the administration of Indian reserved water rights. While the existence of that authority is subject to question, it is strictly limited to water necessary for irrigation and agricultural purposes. Paragraph (b) attempts to bridge the gap from the Secretary's limited authority over Indian reserved water rights to the all encompassing provisions of the proposed rules.

Were we to assume that paragraph (b) is correct, and that Indians have inherent authority to control and administer all reserved water rights on their reservations - a proposition which is subject to serious question - the proposed rules would be unnecessary.

Moreover, if the Secretary has authority only over reserved water necessary for irrigation and agricultural purposes, which is the limit of his express statutory authority, he has no authority to promulgate regulations which deal with water other than that reserved for irrigation and agricultural purposes.

The Western States Water Council feels that the Secretary has no authority to promulgate the rules as they now stand, and considering the controversy involved in defining the Secretary's authority in this area, we believe that the proposed rules should be discarded.

Second, the proposed regulations are replete with attempts to resolve by regulation many issues which are currently pending in various court systems. This can only have the effect of distorting both the legal and the regulatory processes. Examples of issues which are judicially alive, but which are resolved in the proposed rules include:

1. The definition of "reserved water rights" contained in § 260.1(b), erroneously imbues the water rights of Indian Pueblos with the characteristics of federal reserved rights as enunciated in Winters v. United States. The nature of Indian Pueblo rights is currently being litigated in the case of State of New Mexico ex rel. S.E. Reynolds v. Aamodt, et al.
2. The definition of "beneficial use" in § 260.1(c) effectively defines the reasons for which public lands could have been withdrawn to create Indian reservations, which is currently being litigated in numerous lawsuits in the West.
3. The issue of whether the Indians possess the authority to administer all reserved water rights within their reservations is purportedly answered in § 260.2(b), but is currently being litigated in Holly v. United States, et al.
4. § 260.3(a)(1)(v)(5) and § 260.4 provide that Indian reserved rights follow the conveyance of allotted lands to non-Indian successors. In Colville Confederated Tribes v. Walton, the 9th Circuit Court of Appeals has recently held to the contrary.

This is a partial listing of the currently pending issues purportedly resolved by the regulations. Standing alone, however, it would constitute sufficient reason for the Secretary to halt the present effort to adopt the regulations.

Third, the feasibility of the administrative criteria and mechanisms created by the regulations is subject to question. For example, the regulations fail to recognize the need to coordinate the administration of Indian reserved rights with existing state administrative schemes for the allocation and use of the resource.

The Western States Water Council, therefore, urges the Secretary to withdraw the proposed rules. We recommend that before renewing the effort to deal with the Indian water code situation, the Secretary consider the goals which the proposed rules are intended to meet. After doing so, any new regulations should be fashioned so that they respect the bounds of the Secretary's authority, that they do not attempt to decide by regulation currently pending legal issues, and that they attempt to create a system which can function efficiently.

Sincerely yours,

Daniel F. Lawrence
Chairman



WESTERN STATES WATER COUNCIL

220 South 2nd East / Suite 200 / Salt Lake City, Utah 84111 / Phone (801) 521-2800

April 15, 1981

Senator James Abdnor, Chairman
Senate Environment and Public Works
Subcommittee on Water Resources
Room 4204, Dirksen Building
Washington, D.C. 20510

Dear Senator Abdnor:

The Western States Water Council (WSWC) has deliberated at some length about the means by which a reasonable degree of consistency and desirable level of coordination can be achieved among the planning activities and programs of the major federal water agencies. It is apparent that the U.S. Water Resources Council, as presently constituted and structured, has fallen far short of achieving these purposes.

On the other hand, the Western States Water Council is still of the opinion that some mechanism should be provided in order that the needed degree of consistency and level of coordination can be achieved. A decision as to what form this mechanism should take has not yet been arrived at by the WSWC. Secretary Watt's proposal to establish an office of National Water Policy within his staff as well as other proposals will be examined by the WSWC in the months ahead. We would welcome the opportunity to provide our thoughts in this regard to your subcommittee at a later date.

With respect to Title II river basin commissions, the Western States Water Council supports the continuation of such entities on a voluntary basis for those states which find them to be a useful and effective means for dealing with the water planning needs of their regions. However, the WSWC opposes the imposition of any sanctions, implicit or explicit, upon those states which choose not to participate in the activities of a river basin commission.

As for the Title III state assistance planning grants, the Western States Water Council strongly urges Congress not to approve the Administration's proposed rescission of funds for FY81. Many states have been planning upon those grants and have proceeded to retain staff and incur expenses in anticipation thereof. To withdraw half of these funds this late in the fiscal year will work an unfair and undue hardship on those states.

With respect to the future of the Title III program, the Western States Water Council would note that should Congress decide to continue funding for this program, it is imperative that such funding be provided in a reliable and timely manner from year to year. Continuity in the amount of funding is far more important to the states than the amount of the funding itself.

Finally, should Congress decide to terminate the Title III program, the Western States Water Council would suggest that this be done over a period of a year or two. This will provide the states with the time which they will need to either absorb the program with their own funds or make the necessary reductions in program expenses.

We appreciate this opportunity to bring the views of the Western States Water Council to your attention. We look forward to providing further comments as your subcommittee continues its deliberations.

Sincerely,

Daniel F. Lawrence
Chairman

DFL/js
cc: Secretary Watt

POSITION STATEMENT
of the
WESTERN STATES WATER COUNCIL
at Coeur d'Alene, Idaho
July 31, 1981
concerning the
ENDANGERED SPECIES ACT

The Western States Water Council, comprised of representatives of the governors of 12 western states, has carefully considered the present administration of the Endangered Species Act as previously constructed and interpreted. While recognizing the value to the nation of protecting our endangered and threatened species, various member states of the Western States Water Council have experienced serious problems with the Act which demonstrate critical flaws that require legislative and administrative remedies. The Endangered Species Act, as previously constructed and implemented, has in several cases thwarted effective state water resource development, and threatens to continue to do so in the future even as the western states' limited water resources become increasingly important in meeting essential national needs. Therefore, the Western States Water Council urgently requests that the 97th Congress of the United States and the Reagan Administration carefully reconsider the provisions of the Act and its implementation, and seriously consider the following problems and recommendations for amending the Act and improving its administration to more effectively and efficiently meet express national goals.

CONGRESSIONAL PURPOSE

Problem: The Supreme Court in TVA v. Hill found that the legislative intent of Congress in enacting the Endangered Species Act of 1973 "was to halt and reverse the trend towards species extinction, whatever the cost." Congress evidently disagreed, and subsequently enacted amendments intended to provide the flexibility necessary to allow a balancing of endangered species values with other national needs. However, such measures have only partially achieved the intended flexibility.

Recommendations: Congressional purpose and policy should be redefined explicitly in Section 2 to state that the conservation of endangered and threatened species should not automatically be undertaken at all costs, but should be considered in concert with other national goals.

LISTING OF SPECIES AND DESIGNATION OF CRITICAL HABITAT

Problem: Delay and uncertainty with respect to the listing of species and designation of critical habitat have significant economic impacts which need to be more fully addressed by the Act. Further, such actions have been criticized in the past as based on political rather than scientific factors.

Recommendations: The listing of a species and the designation of its critical habitat should be effected promptly and concurrently, based on existing and readily available information. Further, a forum should be established wherein conflicts over judgments with respect to biological facts can be challenged and resolved. Adjustments could easily be made under the present promulgation process at such time as more accurate information became available. The two year time period provided between initial notice of a proposed listing and final publication of regulations should be reduced. Critical habitat should be designated by the Secretary only after providing ample opportunities for official state comment by the respective governor. Such designation should also follow the required economic impact statement.

RECOVERY

Problem: The Act provides that endangered or threatened species be protected from such natural factors as disease and predation. Recovery plans are to be prepared and implemented in order to stabilize threatened species populations without addressing the physical and economic feasibility of such recovery efforts.

Recommendations: The complete conservation of all endangered and threatened species is not physically or economically practicable. Therefore, some prioritization of recovery efforts is necessary within national fiscal constraints. The Act presupposes that there is a significant correlation between the protection of natural ecosystems and the conservation of endangered species. Such a correlation is unproven. Prior to making large investments in potentially expensive conservation efforts, such as land acquisition, other alternatives need to be considered.

STATE WATER LAW

Problem: Contrary to express Congressional intent, the Endangered Species Act has been used in the past to directly abrogate the supremacy of state water laws. For example, the Fish and Wildlife Service is presently using the Act in the Colorado River Basin to mandate instream flows, irrespective of the biological needs of endangered species.

Recommendation: The Western States Water Council strongly urges Congress to specifically address this growing tendency of federal agencies to use environmental statutes to abrogate states' water laws. The Act should be amended to expressly state that the Act will not be used to allocate water, but such allocation will be accomplished under state laws.

INTERAGENCY COOPERATION

FEDERAL AGENCY ACTIONS

Problem: The Act mandates preservation of endangered and threatened species irrespective of primary agency purposes. Such a flat inflexible mandate precludes achievement of a reasonable balance between the value of threatened and endanger species and other important national needs.

Recommendation: Section 7 should be amended to qualify the present mandate and provide that primary agency purposes be given more weight.

CONSULTATION

Problem: Current formal consultation procedures exclude direct state and other non-federal participation. While informal consultation has been established, it is inadequate. The consultation process has sometimes been used by the Fish and Wildlife Service to intimidate other interests into accepting unreasonable delays by threatening jeopardy opinions.

Recommendations: The consultation process needs to be more clearly defined and restructured to provide direct input by non-federal interests directly affected by the relevant agency action. "Good faith" consultation should be more clearly defined. What constitutes initiation of formal consultation should be explicitly stated, and state or permit or license applicants should be allowed to directly request formal consultation.

JEOPARDY OPINION

Problem: The Secretary's opinion, rendered by the Fish and Wildlife Service, as to the potential jeopardy or lack thereof due to an agency's proposed actions, has been routinely delayed by automatic extension of the consultation process. When finally rendered, such opinions have sometimes in the past lacked factual content and have superficially addressed reasonable and prudent project alternatives.

Recommendations: The Secretary's opinion should be promptly delivered within the 90 day statutory limit, except as mutually agreed by the agencies and relevant non-federal interests, and should be based on the best existing and readily available information. The Opinion should not be delayed pending the outcome of any required biological assessment. Again, some forum should be established to provide for challenges to scientific and biological claims of the Fish and Wildlife Service, as well as lead to a resolution of the differences and determination of the facts. Lastly, the Act should be amended to specifically allow at this stage for the implementation of reasonable and prudent alternatives mutually agreed to as a means of mitigating project impacts on threatened or endangered species, and thereby avoid jeopardy.

BIOLOGICAL ASSESSMENTS

Problem: Biological assessments have suffered from the same problems as the jeopardy opinions. They are often unreasonably delayed, and professional judgments leave room for reasonable disagreement. Further, the Interior Solicitor's Office has stated that such assessments should include consideration of a project's cumulative effects, which are

difficult to determine. The latter has been used by the Fish and Wildlife Service to justify the issuance, or threatened issuance, of a jeopardy opinion where project impacts are negligible and a scenario including cumulative impacts of all future projects has not been, and possibly cannot be, reasonably determined.

Recommendations: Again, some forum should be provided to allow for the resolution of differences in professional judgment. However, such assessments must be promptly completed within the six month statutory limit, and decisions must be made based on the information gathered. Adequate funding is important to the quality of such assessments, but where fiscal constraints preclude a totally comprehensive review, decisions must be made using the best readily available information. Review of a project's cumulative impacts, if appropriate, must be limited in scope and should not delay all development pending approval of an uncertain area-wide development scenario.

EXEMPTION PROCEDURE

Problem: It appears that the exemption process has not provided the flexibility and balance between environmental and economic values which Congress intended. To our knowledge only three projects have sought exemptions. The Grey Rocks project was approved with specific mitigating measures, the Tellico Dam project was disapproved for economic reasons (which disapproval Congress later overrode), and the Pittston Refinery project in Eastport, Maine is as yet unresolved. The exemption procedure is time consuming, cumbersome, imprecise and, rather than facilitate conflict resolution, may stonewall meaningful development.

Recommendations: Congress should explicitly state that consideration of exemptions should take place after meaningful consultation, within the statutory time period, has failed to resolve conflicts between the values established by the act and project purposes. The exemptions should not be considered as a matter of last resort following protracted and meaningless discussion within a clouded context of differing interests, or after a particular project's compatibility with all other statutory requirements has been determined. Rather than delay decisions, the process should facilitate timely conflict resolution. To accomplish this objective the process needs to be more clearly defined and shortened to a reasonable period of time.

POSITION
of the
WESTERN STATES WATER COUNCIL
concerning
DAM SAFETY LEGISLATION
Coeur d'Alene, Idaho
July 31, 1981

The Western States Water Council has in the past actively reviewed and commented on dam safety legislation which would define the appropriate role of the federal government. All of the Western States have for many years had ongoing dam safety programs. Collectively, the Western States do not strongly support federal dam safety legislation, and agree that federal initiatives should not usurp states' rights, responsibilities, and prerogatives in this area. However, the introduction of S.761 in the 97th Congress, to authorize a federal program to encourage dam safety, has prompted our response.

The Western States Water Council supports many of the concepts found in S.761. However, when considered by the 97th Congress the Council urges the bill be amended as follows:

SIZE OF DAMS

The bill would amend P.L. 92-367 by deleting the final sentence of Section 1, which reads: "This act does not apply to any such barrier which is not in excess of 6 feet in height, regardless of storage capacity or which has a storage capacity of maximum water storage elevation not in excess of 15 acre feet, regardless of height." Such an explicit limitation as to the definition of a dam is both necessary and desirable. We oppose the proposed change and urge that lines 5 and 6 on page 1 be deleted from the bill.

RIGHT OF ENTRY

Providing the Corps with the proposed right-of-entry should not be necessary within a state having an approved program. This section should be amended by inserting on page 2, line 6 immediately after the word "Act", the following: "in states that do not have an approved program under Section 8 of this Act,".

STATE ASSISTANCE PROGRAM

SECTION 7

The Western States feel assistance should be provided only if requested by a State. Section 7 should therefore be amended on page 3, line 22 after the word "States" by inserting the following: "requesting such assistance"; and on page 3, line 23 by striking the word "those", replacing it with the word "such", and after the word "States" by inserting the following: "requesting assistance". The words "requesting assistance" should also be inserted following the word "State" on page 4 in lines 1 and 3. Lastly, a similar change should be made in Section 8(a) on page 4, line 11 after the word "that" by inserting the following: "requests such assistance and".

SECTION 8(a)

The Western States Water Council strongly opposes the imposition of specific technical or other federal criteria on state programs. The threat of such action can be relieved by providing that the Governor, in lieu of the Secretary of Army, may certify that a State has an adequate dam safety program, if the Governor so chooses. Section 8 should therefore be amended on page 4, line 14 by striking the word "Secretary" and inserting the following: "Governor or the Secretary, if the Governor so chooses,".

Under Section 8(a)(1) the review of construction plans for any dam should be restricted to dams within a state's jurisdiction by inserting on page 4, line 17 after the word "dam" the following: "subject to State jurisdiction".

In Section 8(a)(2) an apparent error on page 4, line 22 should be corrected by striking the word "conducted" and inserting the word "constructed".

The Western States also feel the requirement under Section 8(a)(3) for the inspection of every dam at least once every 2 years is unnecessarily restrictive and should be changed. On page 4, line 24 after the word "dam", the words "subject to State jurisdiction" should

be inserted, and on line 25 after the word "State", the words "at least once every two years" should be deleted and the following inserted: "with reasonable regularity". This change eliminates the need for Section 8(a)(4) which should be removed by deleting lines 1 and 2 on page 5, and by renumbering the subsequent paragraphs accordingly.

Again, the Western States Water Council feels federal legislation should not prescribe in detail how States might best choose to operate their dam safety programs. Section 8(a)(6) of the current bill should therefore be amended on page 5, line 10 by placing the semicolon following the word "imminent" and by deleting the remainder of line 10 thru line 15.

Section 8(a)(7) should be amended on page 5, line 17 by deleting the word "assure" and inserting the word "require".

Section 8(a)(8) appears to imply that in order to have an approved program a State would be required to maintain a standing fund for financing the repair or removal of any dam in an emergency. Such a requirement is unreasonable in view of States' regular fiscal and budgetary procedures. Further, each Governor has access to general emergency funds when required. Therefore, the subsection should be amended on page 5, line 22 by deleting the words " and necessary funds to make" and inserting the following: "in an emergency to require". Further, in lines 23 and 24, delete the words "in order to protect human life and property". The reason for initiating emergency action should remain within the discretion of the State.

SECTION 8(b)

In keeping with the suggestion that a Governor be allowed to certify that the State has an adequate dam safety program, the Western States Water Council urges that Section 8(b), page 6, lines 3 through 11 be amended to read as follows:

(b) Any program which is submitted under the authority of this section shall be deemed approved providing:

- (1) The Governor of the State certifies to the Secretary that the State's program meets the requirements of subsection 8(a), or
- (2) If submitted to the Secretary for approval, 120 days following its receipt by the Secretary, unless the Secretary determines that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines that any program submitted under Section 8(b)(2) cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to enable such plan to be approved.

SECTION 8(c)

Subsection 8(c), in view of the prior amendments to subsection 8(b), is supported by the Western States. However, it should be clarified for the record that congressional intent is that any State's program may be approved by the Governor, if the Governor so chooses, in lieu of the Secretary, and that only the Board may subsequently find a State program to be inadequate. Only then shall the Secretary, if he agrees with the Board, revoke approval of such State's program.

SECTION 9

The Western States Water Council strongly agrees with the need, addressed under Section 9, to provide liability insurance at reasonable rates. The Council supports the condition imposed by Section 9(b) only in concert with the suggested changes, as to a Governor's certification of an approved State program.

SECTION 10

The Western States strongly support the proposed revolving fund for the repair or replacement of unsafe dams. However, the \$20 million authorized to be appropriated is deemed grossly inadequate. The State of Colorado alone has estimated that necessary safety improvements to the 15 most hazardous dams in the State would require \$40 million. The Western States therefore urge that Section 10 be amended on page 8, line 7 by striking the sum of "\$20,000,000" and inserting the sum of "\$500,000,000".

SECTION 11

With respect to the Federal Dam Safety Review Board, the Western States believe the federal construction agencies currently have adequate programs for analyzing and reviewing the safety of dams authorized by the Congress, and constructed and operated under authority of the United States. Transferring such authority to the Board would be duplicative and unnecessary. Rather, the proper role of the Board should be solely to monitor state implementation of the requirements of the Act. The Western States therefore urge that Section 11(a) be amended on page 8, line 19 by deleting everything following the comma, through the word "and" on line 22. Further, on page 8, lines 24 and 25 should be deleted, as well as lines 1 through 3 on page 9 and the words "is authorized" on line 4.

The Western States also feel the Board should be reconstructed under subsection 11(b) to provide more flexibility and state representation by deleting on page 9, line 10, the words "including one representative" as well as all of lines 11 and 12, and line 13 through the second comma. In addition, line 14 should be changed by removing the comma following the word "basis", inserting a period, and deleting the remainder of the line, as well as line 15 through the period. Lastly, on line 15, the word "two" should be deleted and replaced with the word "five".

SECTION 12

The Western States Water Council strongly feels that federal dams should be subject to the jurisdiction of States with approved dam safety programs. Therefore, Section 12 should be amended on page 9, line 22, by deleting everything after the word "shall" through line 25, and inserting the following: "comply with all requirements of an approved State dam safety program".

SECTION 13

The restriction of training to only state dam safety inspectors is unnecessarily restrictive and should allow, for example, for the inclusion of administrative personnel. Section 13 should therefore be amended on page 10, line 4 by deleting the word "inspectors" and inserting the word "personnel".

Again, the Western States Water Council urges the 97th Congress to make the above suggested amendments when considering S.761.

S.761

To authorize a national program to encourage dam safety.

IN THE SENATE OF THE UNITED STATES

March 23 (legislative day, February 16), 1981

Mr. McClure introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To authorize a national program to encourage dam safety.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,
3 That Public Law 92-367 (86 Stat. 506) is amended as
4 follows:

5 ~~(a) SIZE OF DAMS. --Section 1 is amended by striking~~
6 ~~the first sentence.~~

7 (b) RIGHT OF ENTRY. --Section 2 is amended (a) by
8 inserting "(a)" immediately after the words "the Chief of Engineers
9 shall carry out a national program of inspection of dams
10 for the purpose of protecting human life and property.",
11 and by striking and "and" after "inspection" and striking the
12 period after "property" and inserting the following: "and
13 dams located within a State having an approved program
14 under section 8 of this Act." and (b) by adding at the end
15 thereof the following new subsections:

16 (b) In order to carry out the purposes of this Act,
in states that do not have an approved program under
Section 8 of this Act,"

1 the Secretary, or his authorized representative, upon present
2 ing appropriate credentials to the owner, operator, or agent in
3 charge is authorized----

4 "(1) to enter without delay and at reasonable
5 times any damsite, structure, appurtenance, or any
6 work area, or other area used in connection with operation
7 of the dam; and

8 (2) to inspect and investigate during regular
9 working hours and at other reasonable times, and
10 within reasonable limits and in a reasonable manner,
11 any such damsite and all pertinent conditions, struc-
12 tures, machinery, apparatus, devices, equipment, and
13 materials therein or thereon; and to require any owner,
14 operator, agent or employee, or designer, contractor or
15 builder, to provide information regarding the design,
16 construction, operation, and maintenance of the same;
17 and to have access to any records, blueprints, plans, or
18 other pertinent documents pertaining to the design,
19 construction, operation, and maintenance of the same.

20 (c) Except as to cases the court considers of greater
21 importance, any judicial proceedings involving this Act before
22 a district court of the United States, and appeals therefrom,
23 take precedence on the docket over all cases and shall be
24 assigned for hearing and trial or for argument at the earliest
25 practicable date and expedited in every way."

26 (c) CONTRACTOR LIABILITY, -- Section 6 is amended by
27 inserting a new paragraph (2) as follows, and by renumbering
28 paragraph (2) as paragraph (3):

29 "(2) to create any liability for agents or contractors
30 for damages caused by such action or failure to act in excess of
31 the amount of the contract entered into pursuant to the Act;"

1 (d) STATE ASSISTANCE PROGRAM -- Following section
2 6, add the following new sections:
3 "SEC. 7. There is authorized to be appropriated to the
4 Secretary of the Army, acting through the Chief of Engi-
5 neers (hereafter in this Act referred to as the 'Secretary'),
6 \$15,000,000 for each of the fiscal years ending September
7 30, 1982, September 30, 1983, September 30, 1984, and
8 September 30, 1985. Sums appropriated under this section
9 shall be distributed annually among those States *requesting*
10 *such assistance* on the following basis: One-third equally among
11 ~~the~~ *such States requesting assistance* that have
12 established dam safety programs approved under the terms of
13 section 8 of this Act, and two-thirds in proportion to the number
14 of dams located in each State *requesting assistance* that has an
15 established dam safety program under the terms of section 8 of
16 this Act to the number of dams in all States *requesting assistance*
17 with such approved programs. In no event shall funds distributed
18 to any State under this section exceed 50 per centum of the
19 reasonable cost of implementing an approved dam safety program
20 in such State."

21 "SEC. 8. (a) In order to encourage the establishment
22 and maintenance of effective programs intended to assure
23 dam safety to protect human life and property, the Secretary
24 shall provide assistance under the terms of section 7 of this
25 Act to any State that *requests such assistance and* establishes and
26 maintains a dam safety program which is approved under this
27 section. In evaluating a State's dam safety program, under the
28 terms of subsections (b) and (c) of this section, the ~~Secretary~~
29 *Governor or Secretary, if the Governor so chooses* shall determine
30 that such program includes the following:

1 (1) a procedure, whereby, prior to any construction, the
2 plans for any dam *subject to State jurisdiction* will be reviewed
3 to provide reasonable assurance of the safety and integrity of
4 such dam over its intended life;

5 (2) a procedure to determine, during and following construc-
6 tion and prior to operation of each dam built in the State,
7 that such dam has been ~~constructed~~ *constructed* and will be
8 and will be operated in a safe and reasonable manner;

9 (3) a procedure to inspect every dam *subject to state juris-*
10 *isdiction* within such State ~~at least once every two years,~~
11 *with reasonable regularity.*

12 ~~/(4) a procedure for more detailed and frequent safety/~~
13 ~~inspections, if warranted,~~

14 (4) the State has or can be expected to have authority
15 to require those changes or modifications in a dam, or its
16 operation, necessary to assure the dam's safety;

17 (5) the State has or can be expected to develop a system
18 of emergency procedures that would be utilized in the event a
19 dam fails or for which failure is imminent; ~~together with an/~~
20 ~~identification for those dams where failure could be reasonably~~
21 ~~expected to endanger human life, or the environment, and that~~
22 ~~could be introduced in the event of the failure of such dam,~~
23 ~~as well as identification of those necessary public facilities~~
24 ~~which would be affected by such introduction;~~

25 (6) the State has or can be expected to have the authority
26 to ~~assure~~ *require* that any repairs or other changes needed to
27 maintain the integrity of any dam will be undertaken by the
28 dam's owner, or other responsible party; and

29 (7) the State has or can be expected to have authority
30 ~~and necessary funds to take~~ *in an emergency to require*
31 immediate repairs or other changes to, or removal of, a dam,

1 *in order to protect human life and property, and if the owner*
2 *does not take action, to take appropriate action as*
3 *expeditiously as possible.*

4 *“(b) Any program which is submitted to the Secretary under*
5 *the authority of this section shall be deemed approved one hundred*
6 *and twenty days following its receipt by the Secretary unless the*
7 *Secretary determines that such program fails to reasonably meet the*
8 *requirements of subsection (a) of this section. If the Secretary deter-*
9 *mines such a program cannot be approved, he shall immediately*
10 *notify such State in writing, together with his reasons and those*
11 *changes needed to enable such plan to be approved.*

12 *(b) Any program which is submitted under the authority of*
13 *this section shall be deemed approved providing:*

14 *(1) The Governor of the State certifies to the Secretary that*
15 *the State's program meets the requirements of subsection*
16 *8(a), or*

17 *(2) If submitted to the Secretary for approval, 120 days*
18 *following its receipt by the Secretary, unless the Secretary*
19 *determines that such program fails to reasonably meet the*
20 *requirements of subsection (a) of this section. If the Secretary*
21 *determines that any program submitted under Section 8(b)(2)*
22 *cannot be approved, he shall immediately notify such State*
23 *in writing, together with his reasons and those changes needed*
24 *to enable such plan to be approved.*

25 *(c) Utilizing the expertise of the Board established under*
26 *under section 11 of this Act, the Secretary shall review period-*
27 *ically the implementation and effectiveness of approved State*
28 *dam safety programs. In the event the Board finds that a State*
29 *program under this Act has proven inadequate to reasonably*
30 *protect human life and property, and the Secretary agrees, the*
31 *the Secretary shall revoke approval of such State program and*

1 withhold assistance under the terms of section 7 of this Act until
2 such State program has been reapproved."

3 "SEC. 9. (a) In order to assure that owners of dams will be
4 able to obtain liability insurance at reasonable rates, and to
5 protect persons located downriver of dams, the Secretary or the
6 head of any agency of the United States designated by the
7 Secretary, shall provide to any insurer, subject to conditions
8 established by regulation, reinsurance or guarantees of any
9 insurance provided to the owner of a dam to protect such owner
10 from liabilities incurred in the event of the failure of such dam.
11 Reinsurance or guarantees provided under this section shall
12 reimburse an insurer for those liabilities in excess of an amount
13 agreed upon between the Secretary, or his designee, and the
14 insurer.

15 (b) Any reinsurance or guarantees provided under this section
16 shall be available only in a State which has an approved dam
17 safety program under the terms of section 8 of this Act.

18 (c) Agreements on reinsurance or guarantees under this
19 section shall provide that the failure of the owner of any dam to
20 carry out expeditiously any modification or procedure required
21 by a State under the terms of its dam safety program shall
22 result in the cancellation of any reinsurance or guarantee pro-
23 vided by the Secretary, or his designee.

24 (d) There is authorized to be appropriated such sums as may
25 be necessary to carry out this section.

26 (e) Not later than eighteen months after enactment of the
27 Dam Safety Act of 1980, the Secretary and the Secretary of the
28 Treasury shall report jointly to the Congress with an analysis
29 of the effects of this section, together with any recommendations
30 for a more comprehensive dam safety insurance program to
31 assure the availability of insurance to owners of dams inspected

1 under a State program approval under section 8 of this Act,
2 in an effort to lessen or eliminate the need for any disaster
3 assistance in the event of the failure of such a dam."

4 "SEC. 10. There is authorized to be appropriated and remain
5 available the sum of \$20,000,000/\$500,000,000 to be placed in
6 a revolving fund by the Secretary, such funds to be available
7 for loans, on terms established by the Secretary, to any owner
8 for any dam required to make repairs, to replace, or to make
9 other safety improvements in such dam under any safety program
10 approved under section 8 of this Act, if such owner can demon-
11 strate to the Secretary that other funds are not reasonably avail-
12 able, and such owner agrees to repay such funds and at a rate
13 of interest on terms agreed to with the Secretary."

14 "SEC. 11. (a) There is authorized to be established a Federal
15 Dam Safety Review Board (hereinafter referred to as the 'Board'),
16 ~~which shall be responsible for reviewing the procedures and~~
17 ~~standards utilized in the design and safety analysis of dams con-~~
18 ~~structed and operated under authority of the United States, and~~
19 to monitor State implementation of this Act. The Board is author-
20 ized to hire necessary staff and ~~shall review as expeditiously as~~
21 ~~possible the plans and specifications of all dams specifically~~
22 ~~authorized by Congress prior to initiation of construction of such~~
23 ~~dams, and file an advise report on the safety of such dams with the~~
24 ~~appropriate agency, the appropriate State, and the Congress.~~
25 ~~The Board is authorized~~ to utilize the expertise of other agencies of
26 the United States and to enter into contracts for necessary studies
27 to carry out the requirements for this section. There is authorized
28 to be appropriated to the Board such sums as may be necessary
29 to carry out this section.

30 (b) The Board shall consist of nine members selected for their
31 expertise in dam safety, ~~including one representative each from the~~

1 ~~Department of the Army, the Department of the Interior, the~~
2 ~~Tennessee Valley Authority, and the Department of Agriculture,~~
3 ~~plus five members,~~ appointed by the President for periods of five
4 years, on a rotating basis. ~~who are not employees of the United~~
5 ~~States/~~ At least ~~two~~ five members of the Board shall be employees
6 of the States having an approved program under section 8 of this
7 Act. The Chairman of the Board shall be selected from among
8 those members who are not employees of the United States."

9 "SEC. 12. The head of any agency of the United States that
10 owns or operates a dam or proposes to construct a dam in any
11 State, shall, ~~when requested by such State, consult fully with/~~
12 ~~such State on the design and safety of such dam and allow offi-~~
13 ~~cials of such State to participate with officials of such agency in/~~
14 ~~all safety inspections of such dam/ comply with all requirements~~
15 ~~of an approved State dam safety program."~~

16 "SEC. 13. The Secretary shall, at the request of any State
17 that has or intends to develop a dam safety program under section
18 8 of this Act, provide training for State dam safety ~~inspectors/~~
19 ~~personnel.~~ There is authorized to be appropriated to carry out this
20 section \$1,000,000 for the fiscal year ending September 30, 1982,
21 and \$500,000 during each of fiscal years ending September 30,
22 1983, September 30, 1984, and September 30, 1985."

23 "SEC. 14. The Secretary, in cooperation with the National
24 Bureau of Standards, shall undertake a program of research
25 in order to develop improved techniques and equipment for
26 rapid and effective dam inspection, together with devices for the
27 continued monitoring of dams for safety purposes. The Secretary
28 shall provide for State participation in such research and period-
29 ically advise all States of the results of such research. There is
30 authorized to be appropriated to carry out this section \$1,000,000
31 for each of the fiscal years ending September 30, 1982,

1 September 30, 1983, September 30, 1984, and September 30, 1985.”

2 “SEC. 15. The Secretary is authorized to maintain and period-
3 ically publish updated information on the inventory of dams
4 authorized in section 5 of this Act.”

5 REPORTING OF DAM SAFETY

6 SEC. 2. Any report that is submitted to the Committee on
7 Environment and Public Works of the Senate or the Committee on
8 Pubic Works and Transportation of the House of Representatives
9 by the Secretary of the Army, acting through the Chief of
10 Engineers, or the Secretary of Agriculture, acting under Public Law
11 83-566, as amended, which proposes construction of a water
12 impoundment facility, shall include information on the possibility
13 of failure of such facility due to geologic or design factors, the
14 potential impact of the failure of such facility, and information on
15 the design features that would prevent, lessen, or mitigate such
16 possibility of failure or the impact of failure.

17 SHORT TITLE

18 SEC. 3. This Act shall be known as the “Dam Safety Act of
19 1981”.



WESTERN STATES WATER COUNCIL

220 South 2nd East / Suite 200 / Salt Lake City, Utah 84111 / Phone (801) 521-2800

October 20, 1981

William R. Gianelli
Assistant Secretary for Civil Works
Department of the Army
Washington, D.C. 20310

Dear Bill:

This is in response to your request of the Western States Water Council for comments on the two page document dated September 4, 1981 and entitled "Water Project Planning Guidelines - A Summary of Major Proposed Policy Positions."

The Council heartily endorses the Administration's proposal to repeal the Water Resources Council's Principles, Standards and Procedures and to issue in their stead flexible guidelines to govern water resource planning. We concur that present procedures are too complex, inflexible and difficult and expensive to apply and are in need of a major overhaul.

The guidelines presented in the September 4th document are in brief summary form, and sans many of the crucial details. Hence, it is difficult to comment with certainty and without the strong possibility that we are missing the intent; but if you will accept our comments as those of old friends and former colleagues wishing to be helpful, we will accept the risk of offering some preliminary comments.

We concur that a primary national planning objective should be National Economic Development (NED), provided other benefits are recognized and taken into account in project formulation and in determination of the justification to proceed with authorization and implementation. However, planning for water projects based strictly on a National Economic Development (NED) objective would not be compatible with existing state water plans and planning efforts in many of the states. If the states are asked to cost share in a project, then the plan must reflect the states' objectives.

Further, we are concerned that the consideration of benefits other than those normally included in an NED accounting will not be meaningful if all exceptions to strict adherence to selection of the plan with the greatest net economic benefits will require approval of the Cabinet Council on Natural Resources and Environment. In addition, it is not clear how emphasis can "be placed on avoiding or mitigating adverse effects of alternative plans and on protecting the Nation's environment pursuant to national environmental statutes and Executive Branch policies" if the plan with the greatest economic benefits must be selected unless the Cabinet Council approves otherwise.

We cannot concur that the plan that has the maximum net economic benefits is necessarily the best plan from a national standpoint. One of the alternative plans may provide greater total benefits and still possess a benefit cost ratio considerably in excess of one-to-one. Further, we cannot agree that all costs in excess of those associated with the plan that has the maximum economic net benefits should be borne by non-federal interests. National interests may be the principal beneficiaries of these additional benefits.

We are, of course, pleased with the proposal to involve states in all aspects of planning.

We concur that the guidelines should be flexible rather than rigid rules. We cannot, however, support a proposal to estimate economic impacts of plans in accordance with existing detailed procedures and would urge that those procedures not be made a part of the guidelines. We believe said procedures to be inflexible and punitive and the root of much of the difficulty with the existing principles and standards.

We appreciate very much the opportunity to review the proposed planning guidelines and stand ready to assist in any way that we can with their future refinement.

Best personal wishes.

Sincerely,

Charles E. Nemir
Chairman

BUDGET AND FINANCE

At the quarterly meeting held April 9, 1981 in Salt Lake City, Utah the Executive Committee adopted a budget for FY 81-82 of \$272,530. The schedule also called for yearly assessments of \$18,500 per state for FY 82. To accommodate states on biennial budgets, state assessments were again set in advance. The yearly state assessments for FY 83 were set at a maximum of \$19,500. The Executive Director and the Secretary-Treasurer were given authority to make line-item adjustments to correspond with expenditures at the end of FY 81. In future years, when a comparison is made between budget years, it will be made against what the expected actual expenditures will be rather than figures of the approved budget.

HANSEN, BARNETT & MAXWELL

A PROFESSIONAL CORPORATION

CERTIFIED PUBLIC ACCOUNTANTS

345 EAST BROADWAY
SALT LAKE CITY, UTAH
84111

July 15, 1981

Members of the Council
Western States Water Council
Salt Lake City, Utah

We have examined the general fund comparative balance sheets and statements of general fixed assets of the Western States Water Council as of June 30, 1981 and 1980 and the related statement of revenue and expenditures and fund balance, and statement of investment in fixed assets for the years then ended. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Western States Water Council at June 30, 1981 and 1980 and the results of its operations for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Hansen, Barnett & Maxwell
SIGNED

WESTERN STATES WATER COUNCIL

General Fund

Statement of Revenues and Expenditures and Fund Balance

For the Years Ended June 30, 1981 and 1980

	Budget Note D	Actual	Actual Over (Under) Budget	Actual Prior Year
Revenues				
Member States' assessments	\$212,400	\$212,400	\$ -	\$198,000
Texas assessment	-	4,000	4,000	5,000
Interest income	-	22,603	22,603	20,057
Other	-	-	-	7
Total Revenues	212,400	239,003	26,603	223,064
Expenditures				
Salaries	116,000	115,215	(785)	107,953
Travel	35,200	34,371	(829)	25,969
Contract services	5,000	-	(5,000)	2,767
Payroll taxes and employee benefits	24,500	21,926	(2,574)	23,856
Printing and reproduction	13,400	13,141	(259)	11,373
Rent	16,000	15,222	(778)	14,534
Freight and postage	5,100	4,860	(240)	4,213
Telephone	6,000	6,077	77	6,951
Furniture and equipment	9,000	8,817	(183)	2,663
Office supplies	3,200	3,071	(129)	2,412
Reports and publications	2,500	2,246	(254)	2,117
Meetings and arrangements	1,300	1,240	(60)	998
Accounting	1,300	1,205	(95)	1,025
Insurance	1,000	955	(45)	517
Contingencies	3,800	4,994	1,194	1,938
Total Expenditures	243,300	233,340	(9,960)	209,286
Excess (Deficiency) of Revenues Over				
Expenditures	(30,900)	5,663	36,563	13,778
Fund Balance -				
Beginning of Year	126,214	126,214	-	112,436
Fund Balance -				
End of Year	\$ 95,314	\$131,877	\$ 36,563	\$126,214

The Executive Committee Charter was changed at the Jackson, Wyoming meeting on October 16, 1981

EXECUTIVE COMMITTEE CHARTER

This charter of the Executive Committee of the Western States Water Council was adopted by resolution on January 29, 1970, at the meeting of the Council in Seattle, Washington and amended on July 26, 1979 at the meeting in Sitka, Alaska, and on October 16, 1981 at the meeting in Jackson, Wyoming. It is the administrative and steering committee of the Council on matters outlined in this Charter and such other matters as may be related thereto.

Objective

The committee shall assist the Council in carrying out effective cooperation among western states in planning for programs leading to integrated development of water resources by state, federal, and other agencies; by acting as a steering committee; by making sure there is consistency and no overlap of Council liaison with national organizations, including the Interstate Conference on Water Problems, National Governors' Association, Water Resources Council, federal departments, National Water Resources Association, Council of State Governments; and by establishing and maintaining liaison with western organizations such as the Western Governors' Conference and the Western Governors' Policy Office.

Authority

The authority of the Executive Committee derives from the Council itself and includes the following powers: (1) To act upon internal and administrative matters between meetings of the Council; (2) To call special meetings of the Council on external matters when prompt action by the Council before the next regular meeting is deemed necessary by a majority of Executive Committee members; (3) To create working groups and ad hoc groups; (4) To make assignments to committees; (5) To receive committee reports; and (6) To implement actions and programs approved by the Council.

Program

The Committee shall correlate the Council's liaison with national and regional agencies, and correlate the Council's efforts to keep abreast of broad-scaled developments as they relate to Council programs. The Committee shall be authorized to initiate recommendations for Council actions at conferences, hearings, and special meetings with national water leaders. The Committee may make assignments to other committees and may give direction as to the scope and nature of their activities, and may delegate authority it deems appropriate to the Management Subcommittee of the Executive Committee. The Management Subcommittee is composed of the immediate past chairman, the chairman, the vice-chairman, the secretary-treasurer, and the Executive Director. In the event that one of these positions is vacant, the position on the Management Subcommittee can be filled by a member of the Executive Committee at the discretion of a majority vote of the Management Subcommittee.

Organization and Voting

The Executive Committee of the Western States Water Council consists of one representative from each member state in accordance with Article IX - Executive Committee - of the "Rules of Organization." The Chairman and Vice Chairman of the Council shall serve as officers of the Executive Committee but do not necessarily have to be voting members of the Executive Committee. The Council staff furnishes necessary assistance as desired and requested by the Executive Committee.

Each member of the Executive Committee shall have one vote in conducting business. A quorum shall consist of a majority of members. A majority of those voting shall prevail on internal matters. If an external matter comes before the Executive Committee between Council meetings, and the Executive Committee finds an emergency exists, it may take final action by unanimous vote of all members. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

Meetings

Regular meetings of the Executive Committee may be held in conjunction with meetings of the Council. Special meetings of the Executive Committee may be called by the Chariman, or by the Vice-Chairman in the event the Chairman is incapacitated, or by any six (6) members, upon five-days' notice to all members stating the time and place of the meeting. When all members are present, no notice is required. All meetings may be adjourned to a time certain by majority vote of those present.

Reporting

The Committee shall report to the Council at each Council meeting as to any actions it may have taken between meetings.

EXECUTIVE COMMITTEE MEMBERS

Wesley E. Steiner - Arizona
Ronald B. Robie - California
D. Monte Pascoe - Colorado
Herman J. McDevitt - Idaho
John E. Acord - Montana
Roland D. Westergard - Nevada

S. E. Reynolds - New Mexico
James E. Sexson - Oregon
Bill Clayton - Texas
Thorpe A. Waddingham - Utah
Donald W. Moos - Washington
George Christopoulos - Wyoming

Management Subcommittee

Chairman
Vice-Chairman
Secretary-Treasurer
Past Chairman
Executive Director

The Legal Committee Charter was changed at the Jackson, Wyoming meeting on October 16, 1981

LEGAL COMMITTEE CHARTER

Objective

The Committee shall assist in initiating, establishing and carrying out the objectives of the Council by providing guidance on the social, ethical, legal and political aspects of the programs relating to water resource and water quality.

Program

To review and develop recommended Council positions on current legislation, laws, administrative rules and activities relating to water resources, water rights, related land use and Indian issues and to examine and keep the Council current on all ongoing pertinent court cases.

Organization and Voting

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the state's delegates to the Council. Any Legal Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

Meetings

The Committee shall meet at the call of the Committee chairman.

Reports

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or Executive Committee.

Charter Adoption

This Charter of the Legal Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

LEGAL COMMITTEE MEMBERS

Tom Choules - Arizona - Chairman
Ronald B. Robie - California
D. Monte Pascoe - Colorado
Ray Rigby - Idaho
Henry Loble - Montana
Roland D. Westergard - Nevada

George Hannett - New Mexico
George Proctor - Oregon -
Vice Chairman
Bill Clayton - Texas
Harry D. Pugsley - Utah
Charles B. Roe, Jr. - Washington
Willard Rhoads - Wyoming

Reserved Rights Subcommittee

Charles B. Roe, Jr. - Washington - Chairman
Richard Simms - New Mexico
Tom Choules - Arizona
Lawrence Wolfe - Wyoming
Henry Loble - Montana
Roland D. Westergard - Nevada

160-Acre Subcommittee

Ray Rigby - Idaho - Chairman
Ruben Ayala - California
Tom Choules - Arizona
George Proctor - Oregon

Joint Subcommittee on Section 404

Charles B. Roe, Jr. - Washington
Harry Pugsley - Utah
Ronald B. Robie - California
Willard Rhoads - Wyoming (alt.)

FERC Licensing Subcommittee

Ronald B. Robie - California
Chairman
Charles B. Roe, Jr. - Washington
George Proctor - Oregon
Lawrence Wolfe - Wyoming

The Water Quality Committee Charter was changed at the Jackson, Wyoming meeting on October 16, 1981

WATER QUALITY COMMITTEE CHARTER

Objective

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on the water quality and environmental aspects of all programs of interest to the Council.

Program

To review and develop recommended Council positions on water quality and environmental standards and problems relating to the water resources of the Western United States.

Organization and Voting

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the State's delegates to the Council. Any Water Quality Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

Meetings

The Committee shall meet at the call of the Committee chairman.

Reports

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or the Executive Committee.

Charter Adoption

This Charter of the Water Quality Committee of the Western States Water Council was adopted by resolution on January 16, 1976 at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

WATER QUALITY COMMITTEE MEMBERS

Robert Lundquist - Arizona
- California

Gary Broetzman - Colorado
Herman J. McDevitt - Idaho
Donald G. Willems - Montana
Hal Smith - Nevada
Odis Echols - New Mexico

William H. Young - Oregon

Charles Nemir - Texas
Calvin Sudweeks - Utah
Vice Chairman

John Spencer - Washington
Chairman

George Christopulos - Wyoming

Groundwater Subcommittee

Steve Allred - Idaho - Chairman

Don Maughan - Arizona
Don Willems - Montana

Charles Nemir - Texas
Helen Joyce Peters - California

Endangered Species Subcommittee

Daniel F. Lawrence - Utah - Chairman

Robert E. Lundquist - Arizona
George Christopulos - Wyoming

J. William McDonald - Colorado
James E. Sexson, Oregon

Joint Subcommittee on Section 404

John Spencer - Washington - Chairman
George Christopulos - Wyoming

The Water Resources Committee Charter was changed at the Jackson, Wyoming meeting on October 16, 1981

WATER RESOURCES COMMITTEE CHARTER

Objective

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on water resources planning, conservation, and developments that are of common interest to the eleven Western States.

Program

To review and develop recommended Council positions on current legislation, regulations, criteria, plans and problems relating to water planning, management and conservation development for all purposes, and utilization.

Organization and Voting

Committee membership is by appointment by the states of the Council, one member from each state, but not necessarily one of the state's delegates to the Council. Any Water Resource Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

The Committee chairman shall be appointed by the Chairman of the Council from Committee membership. The Committee chairman will appoint a vice chairman, and subcommittees as needed. The Council staff will furnish necessary assistance as desired and requested by the Committee. A member of the staff will serve as secretary.

Meetings

The Committee will meet at the call of the Committee chairman.

Reporting

The Committee shall submit its reports and/or recommendations to the Council and to the Executive Committee if so requested. The Committee shall not issue any public statements or reports except as may be directed by the the Council and the Executive Committee.

Charter Adoption

This Charter of the Water Resources Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

WATER RESOURCES COMMITTEE MEMBERS

Steve Allred - Idaho - Chairman
Wesley E. Steiner - Arizona
Senator Ruben Ayala - California
J. William McDonald - Colorado
- Vice Chairman
John E. Acord - Montana
Duane Sudweeks - Nevada

S. E. Reynolds - New Mexico
James Sexson - Oregon
A. L. Black - Texas
Thorpe Waddingham - Utah
Donald W. Moos - Washington
Myron Goodson - Wyoming

Dam Safety Subcommittee

J. William McDonald - Colorado - Chairman
Wesley E. Steiner - Arizona
James Sexson - Oregon

Dee Hansen - Utah
Roland D. Westergard - Nevada

P.L. 89-80 Subcommittee

John E. Acord - Montana - Chairman
J. William McDonald - Colorado
James Sexson - Oregon

Indian Water Development Subcommittee

Myron Goodson - Wyoming - Chairman
Wesley E. Steiner - Arizona
John E. Acord - Montana

Principles and Standards Subcommittee

Wesley E. Steiner - Arizona - Chairman
A. Kenneth Dunn - Idaho
Daniel F. Lawrence - Utah

Cost Sharing Subcommittee

A. Kenneth Dunn - Idaho - Chairman
Wesley E. Steiner - Arizona
J. William McDonald - Colorado

These Rules of Organization were changed at the Jackson Hole, Wyoming meeting on October 16, 1981

**APPENDIX A
RULES OF ORGANIZATION**

**APPENDIX A
RULES OF ORGANIZATION**

Article I - Name

The name of this organization shall be "THE WESTERN STATES WATER COUNCIL."

Article II - Purpose

The purpose of the Western States Water Council shall be to accomplish effective cooperation among western states in planning for programs leading to integrated development by state, federal, and other agencies of their water resources.

Article III - Principles

Except as otherwise provided by existing compacts, the planning of western water resources development on a regional basis will be predicated upon the following principles for protection of states of origin:

- (1) All water-related needs of the states of origin, including but not limited to irrigation, municipal and industrial water, flood control, power, navigation, recreation, water quality control, and fish and wildlife preservation and enhancement shall be considered in formulating the plan.
- (2) The rights of states to water derived from the interbasin transfers shall be subordinate to needs within the states of origin.
- (3) The cost of water development to the states of origin shall not be greater, but may be less, than would have been the case had there never been an export from those states under any such plan.

Article IV - Functions

The functions of the Western States Water Council shall be to:

- (1) Prepare criteria in the formulation of plans for regional development of water resources to protect and further state and local interests.
- (2) Undertake continuing review of all large-scale interstate and interbasin plans and projects for development, control or utilization of water resources in the Western States, and submit recommendations to the Governors regarding the compatibility of such projects and plans with an orderly and optimum development of water resources in the Western States.
- (3) Investigate and review water related matters of interest to the Western States.

Article V - Membership

- (1) The membership of the Council shall consist of not more than three representatives of each of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming appointed by and serving at the pleasure of the respective Governors. The states of Alaska and Hawaii shall be added to membership if their respective Governors so request.
- (2) Member states may name alternate representatives for any meeting.
- (3) Any state may withdraw from membership upon written notice by its Governor.

Article VI - Ex-Officio Members

The Governors of the member states shall be ex-officio members and shall be in addition to the regularly appointed members from each state.

Article VII - Officers

The officers of the Council shall be the Chairman, Vice Chairman, and Secretary-Treasurer. They shall be selected in the manner provided in Article VIII.

Article VIII - Selection of Officers

The Chairman, Vice Chairman and Secretary-Treasurer, who shall be from different states, shall be elected from the Council by a majority vote at a regular meeting to be held in July of each year. These officers shall serve one-year terms but may not be elected to serve more than two terms consecutively in any one office.

Article IX - Executive Committee

- (1) Representatives of each state shall designate one of their members to serve on an Executive Committee which shall have such authority as may be conferred on it by these Rules of Organization, or by action of the Council. Any Executive Committee member may designate an alternate to serve in his absence.
- (2) The Council may establish other committees which shall have such authority as may be conferred upon them by action of the Council.

Article X - Voting

Each state represented at a meeting of the Council shall have one vote. A quorum shall consist of a majority of the member states. No matter may be brought before the Council for a vote unless advance notice of such matter has been mailed to each member of the Council at least 30 days prior to a regular meeting and 10 days prior to a special meeting at which such matter is to be considered; provided, that matters may be added to the agenda at any meeting by unanimous consent of those

states represented at the meeting. In any matter put before the Council for a vote, other than election of officers, any member state may upon request obtain one automatic delay in the voting until the next meeting of the Council. Further delays in voting on such matters may be obtained only by majority vote. No recommendation may be issued or external position taken by the Council except by an affirmative vote of at least two-thirds of all member states; provided that on matters concerning out-of-basin transfers no recommendation may be issued or external position taken by the Council except by a unanimous vote of all member states. On all internal matters; however, action may be taken by a majority vote of all member states.

Article XI - Conduct of Meetings

Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised. A ruling by the Chair to the effect that the matter under consideration does not concern an out-of-basin transfer as an appealable ruling, and in the event an appeal is made, such ruling to be effective must be sustained by an affirmative vote of at least $\frac{2}{3}$ of the member states.

Article XII - Meetings

The Council shall hold regular quarterly meetings at times and places to be decided by the Chairman, upon 30 days written notice. Special meetings may be called by a majority vote of the Executive Committee, upon 10 days written notice.

Article XIII - Limitations

The work of the Council shall in no way defer or delay authorization or construction of any projects now before Congress for either authorization or appropriation.

Article XIV - Amendment

These articles may be amended at any meeting of the Council by unanimous vote of the member states represented at the meeting. The substance of the proposed amendment shall be included in the call of such meetings.

PRINCIPLES - STANDARDS - GUIDELINES

PREAMBLE

The Constitution of the United States and the Constitutions of the individual States shall be adhered to in Western regional water planning and development.

This statement of principle reaffirms, expands and clarifies principles set forth in Article III, "Rules of Organization" of the Western States Water Council.

1.0 PRINCIPLES

1.1 Comprehensive regional planning, transcending political boundaries, is a major consideration in the maximum proper utilization of the water and related resources of the West. Development of those resources to meet all reasonable needs as they may arise is essential to the continuing prosperity of the region and each of its economically interdependent parts.

1.1.1 The planning process should include or supplement rather than supersede existing water resource developments; it should complement and strengthen local and state planning activities rather than displace them; it should result from cooperative effort of all agencies concerned.

1.1.2 The planning program should be aimed to achieve a reasonably equitable balance among all existing and potential uses of water, insofar as the supply available or to be developed will permit, consistent with established rights.

1.1.3 Water resources of the region should be put to beneficial use to the fullest practicable extent in an efficient manner in accord with the needs and types of use in the particular area and wasteful and inefficient practices or those that unnecessarily degrade water quality should be eliminated.

1.1.4 New uses of western water resources should make the most practical and efficient use of water resources and should minimize any necessary reductions in the quality of western water resources.

1.1.5 Water resource developments should be implemented when they are well planned, endorsed by local and state governments and provide for maximum social and economic benefits from the use of western water resources and integrate maximum use concepts with conservation, environmental enhancement and the preservation of natural resources.

1.1.6 The States should be the lead governmental body in the administration of water rights and in the preparation of statewide water plans so that wise use and best conservation practices can be assured.

1.1.7 It is imperative that all States, as expeditiously as possible, make thorough studies of their water needs in accordance with Guidelines and Standards similar to those adopted by the Council.

1.1.8 Long-range water plans should be expeditiously developed which are flexible enough to permit modifications to meet changing long-term needs and advances in technology, yet specific enough to provide solutions for immediate water supply problems.

1.1.9 Water exportation studies shall include a thorough examination of efficiency of water use and cost-price relationships and a comprehensive economic evaluation that considers all costs and benefits accruing to the area of origin and costs and benefits accruing to the area of import. The economic analysis must include similar studies for alternative sources of supply. Aesthetic values shall be considered in over-all project evaluation.

1.1.10 Close cooperation and free-interchange of ideas and reporting of data on a uniform basis among all affected local, State and Federal interests, shall be sought.

1.1.11 Water resource planning shall consider water quality, as well as quantity.

1.2 Regional water planning should be designed to avoid interference with existing rights to the use of water. Any taking of land or water rights shall be governed by the law of eminent domain. Interstate compact allocations shall be honored.

1.2.1 Any entity studying transfer of surplus water shall recognize the economic, social, legal, political and ethical implications of the transfer on both the exporting and importing areas. Such entity must plan so as to assure social and economic growth and development, by either:

- (a) The return or replacement of the water exported to the area of origin; or
- (b) Providing equivalent beneficial programs acceptable to the area.

1.2.2 The rights to water of regions; states or individuals must be recognized and guaranteed through due process of law.

1.3 Except as otherwise provided by existing law, the planning of water resources development in the Western states shall be predicated upon the following principles for protection of and assistance to states of origin.

1.3.1 Inter-basin or Inter-regional transfer of water shall contemplate only the transfer from the area of origin of those quantities of water deemed to be surplus. The States shall endeavor to agree upon determination or quantities of water that are surplus.

1.3.2 In making determination of possible surplus water, all water-related needs of the States and areas of origin bearing on environmental protection, economic prosperity and social well being shall be recognized.

1.3.3 All water requirements, present or future, for uses within the drainage area of any river basin, shall have priority and right in perpetuity to the use of the waters of that river basin, for all purposes, as against the uses of water delivered by means of such exportation works, unless otherwise provided by treaty, interstate agreement or compact.

1.3.4 The cost of water development to the States of origin shall not be greater, but may be less, than would have been the case had there never been an export from those States under any such plan.

1.3.5 In the study on interstate diversion, any interstate diversion project shall neither impede nor minimize the development of water resources in the state of origin, and shall result insubstantive net advantage to such State over the advantage it could have obtained, by itself or otherwise, without such diversion project.

1.3.6 All plans for inter-basin diversion of water shall provide for such financial arrangements with the states of origin as may be necessary to comply with Section 1.3.4. and 1.3.5 above.

1.3.7 The exportation of water shall not change an area of origin from a water-rich to a water-deficient economy and shall not adversely affect the competitive position of the area of origin.

1.3.8 State or area of origin priority shall be explicitly set forth in all contracts for the use of imported water. Should such priority ever be denied, through subsequent action of the Congress, or otherwise, areas of origin will be entitled to just compensation.

1.3.9 Federal statutes designed to protect areas and states of origin, in any regional interstate plan of origin in any regional interstate plan of water development, should include the consent by the United States for any such state of origin to sue in the Federal Courts, to compel Federal officials to comply with such statutes and for such other relief as deemed equitable.

1.4 This statement of principles shall not be considered as any support or advocacy for the diversion of water from one river basin to another.

1.5 The public should be educated concerning the various and many uses of water and the wise and prudent management thereof. Sound water resource and related land management concepts and the needs and issues confronting the region and the nation should be disseminated. All means and possibilities of financing, development of, and implementing an education program should be explored.

2.0 STANDARDS FOR GUIDANCE IN THE FORMULATION OF CONCEPTS AND PLANS FOR STAGED REGIONAL DEVELOPMENT OF WATER RESOURCES.

2.1 A Western States water resource program shall be developed and maintained by the Western States Water Council through compilation and analysis of available state-wide plans and federal inter-basin and interstate plans, to provide a broad and flexible pattern into which future definite projects may be integrated in an orderly fashion.

2.2 A basic objective of the program is to provide a framework within which projects may be developed to meet the requirements for water to the extent feasible as and where they arise.

2.3 A determination of the advantages and disadvantages of alternate methods of meeting water needs should be included in the Western States water resource program.

2.4 In order to provide the uniformity necessary to facilitate compilation and analysis of the various state-wide water plans, it is recommended that such plans contain projects of usable water resources and an inventory of need for the years: 1980, 2000, 2020, 2040.

2.5 Each Member State should strive to complete, no later than June 30, 1977, a preliminary water plan, including estimates of water resources and estimates of current and long-range water needs.

3.0 GUIDELINES AND PROCEDURES FOR CORRELATION OF PLANS AND SCHEDULES AMONG WESTERN STATES

3.1 Interstate Exchange of Information and Data.

3.1.1 When a state publishes reports or takes any action which may affect the plans or objectives of other States, the affected States and the Western States Water Council staff should be furnished copies thereof.

Request for basic data and supporting information should be initiated by the state needing the data or information.

3.1.2 The request for the exchange of basic data and supporting information should be coordinated through one state agency.

3.1.3 The name, official position address and telephone number of the designated state office will be forwarded to the Western States Water Council staff. The staff will prepare a consolidated list of designated offices and distribute copies to all States through the State's member of the Executive Committee, Western States Water Council.

3.1.4 The type of reports and actions which should be sent to other States and the Western States Water Council staff includes, but is not limited to copies of the following:

3.1.4.1 Summaries of current and long-range estimates of various types of water needs and usable water resources.

3.1.4.2 Planning schedules for developments of all large scale interstate and interbasin plans and projects.

3.1.4.3 State evaluation of programs such as weather modification, watershed management, groundwater recharge, desalination, and waste water reclamation.

3.1.4.4 Major legal and administrative decisions pertaining to water resources.

3.1.4.5 State or Federal legislation as proposed by any state materially affecting Western States water planning.

3.2 Correlation of Plans and Schedules.

3.2.1 A master list shall be prepared and maintained at the headquarters of the Western States Water Council of items furnished pursuant to Section 3.1 with copies to be furnished to member States at appropriate intervals.

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