



**RESOLUTION**  
**of the**  
**WESTERN STATES WATER COUNCIL**  
**on**  
**STATE PRIMACY OVER GROUNDWATER**

**Texas Hosted Spring Virtual Meetings**  
**March 25, 2021**

**WHEREAS**, groundwater is a critically important natural resource that is vital to the economy and environment of the arid West;

**WHEREAS**, the Desert Land Act of 1877 and the United States Supreme Court in *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935) recognize States have exclusive authority over the allocation and administration of rights to the use of the groundwater within their borders and States and their political subdivisions are primarily responsible for the protection, control and management of the resource;

**WHEREAS**, the Congress has created and the U.S. Supreme Court has recognized federal reserved rights to surface water, but no federal statute has addressed any federal property or other rights related to groundwater; and

**WHEREAS**, the regulatory reach of federal statutes and regulations, including but not limited to the Clean Water Act, Endangered Species Act, Multiple-Use Sustained-Yield Act, National Environmental Policy Act, Organic Administration Act (USFS), Reclamation Act of 1902, Safe Drinking Water Act, Wild and Scenic Rivers Act, Wilderness Act and the Comprehensive Environmental Response, Compensation, and Liability Act, were never intended to infringe upon state or private ownership or control over groundwater; and

**WHEREAS**, States recognize the importance of effective groundwater management and are in the best position to protect groundwater quality and allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances; and

**WHEREAS**, working cooperatively with their federal partners, states have shown that they have the ability and authority to address federal needs regarding groundwater within existing legal frameworks, including but not limited to memoranda of understanding, water rights compacts, stipulations, and other methods; and

**WHEREAS**, the conditions affecting groundwater supplies, demands, and impairments vary considerably across the West and within individual states; and

**WHEREAS**, statutory restrictions on obtaining general state permits for federal remediation projects, such as CERCLA §121(e)(1) (42 U.S. Code § 9621), should not apply to the withdrawal and use of limited water resources; and

**WHEREAS**, federal efforts to exert control over or ownership interests related to groundwater or otherwise infringe upon or supersede state rights to the use of groundwater or state groundwater management laws and authorities are contrary to federal law and threaten effective groundwater management and protection.

**NOW, THEREFORE, BE IT RESOLVED**, states have exclusive authority over the allocation and administration of rights to the use of the groundwater located within their borders and are primarily responsible for allocating, protecting, managing and otherwise controlling the resource; and

**BE IT FURTHER RESOLVED**, that the Western States Water Council opposes any and all efforts that would establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law, or diminish the primary and exclusive authority of States over groundwater; and

**BE IT FURTHER RESOLVED**, that federal agencies should work cooperatively with appropriate state agencies and officials to address federal needs involving groundwater through state laws and authorities; and

**BE IT FURTHER RESOLVED**, nothing stated in this position is intended to apply to the interpretation or application of any interstate compact, court decrees, international treaty or tribal settlement agreement.