



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
MIGRATORY BIRDS AND THE
MANAGEMENT OF STATE WATER RIGHTS AND RESOURCES

Arlington, Virginia
April 6, 2022

WHEREAS, the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits the taking of various migratory birds; and

WHEREAS, in December of 2021, the United States Fish and Wildlife Service (USFWS) revoked its regulation establishing that a taking under the MBTA does not include an incidental taking (86 FR 54642); and

WHEREAS, the USFWS seeks to promulgate a new regulation under the MBTA that would for the first time codify a prohibition on incidental takes and would also allow incidental takes for government agency activities through general and specific permits; and

WHEREAS, water in the West is often a scarce resource critical for both a healthy economy and healthy environment, including protected endangered and threatened species; and

WHEREAS, water is both a public and a private resource, with some uses benefitting the public good as a whole, while others are recognized as protected private property rights; and

WHEREAS, the States are primarily responsible for the allocation, administration, management, and protection of the water resources and rights to the use of water within their borders, as well as the management and protection of migratory birds and the environments upon which they depend; and

WHEREAS, various state and local governmental agencies own or operate water use or distribution facilities which benefit water users and the public as well as migratory birds and their respective environments; and

WHEREAS, many, if not most, of the senior state granted rights to the use of waters in western rivers and streams predate federal environmental protections by decades, and the certainty provided by early water rights continues to be the foundation for past, present and future investments; and

WHEREAS, the West and its flora and fauna, including protected species, are part of a unique and unparalleled heritage reflecting the Nation's value for wild and open spaces, as well as a western conservation ethic; and

WHEREAS, western States and many western water uses are also committed to the preservation of western species through reasonable, transparent and effective regulatory protections and restrictions, as well as conservation incentives for private property owners; and

WHEREAS, opportunities exist for greater collaboration and cooperation to conserve threatened and endangered species, while recognizing state granted water rights and addressing western water issues, without unmitigated or uncompensated “takings” of either water rights or threatened and endangered species where provided for under state or federal law.

NOW, THEREFORE, BE IT RESOLVED that the Council calls upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress’ intent to resolve water and species protection issues and to ensure the creation of flexible regulations that do not interfere with state management of water resources.