



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
STATES' WATER RIGHTS AND NATURAL FLOWS
Deadwood, South Dakota
September 16, 2021**

WHEREAS, the Western States Water Council strongly supports preservation of the States' inherent right to develop, use, control, and distribute water; and

WHEREAS, States have exclusive authority over the allocation and administration of rights to the use of surface water located within their borders and are primarily responsible for protecting, managing and otherwise controlling the resource; and

WHEREAS, States are in the best position to protect 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, the Flood Control Act of 1944 specifically declared the policy of Congress to recognize the interests and rights of the Missouri River Basin States in determining the development of the watersheds within their borders and likewise their interests and rights in water use and control, and to preserve and protect to the fullest extent established and potential uses of the rivers' natural flows, those flows being the natural flows that would pass through the states in the absence of the U.S. Army Corps of Engineers dams; and

WHEREAS, the federal government has long recognized the right to use water as determined under the laws of the various states; and

WHEREAS, the various states have the authority and duty to manage permitting of stored water to supplement natural flows; and

WHEREAS, federal agencies in the western states, such as the Bureau of Reclamation, generally recognize western water laws and natural flows through reservoir operations, with releases from storage that supplement natural flows, and water service contracts that supplement natural flow; and

WHEREAS, representatives of the U.S. Army Corps of Engineers have indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the U.S. Army Corps of Engineers without recognition of the States' rights to natural flows being separate from the captured floodwaters stored within those reservoirs; and

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council urges the U.S. Army Corps of Engineers to recognize and proceed in conformity with State law related to the development, use, control, appropriation, storage, and distribution of the States' surface waters, including natural flows.

BE IT FURTHER RESOLVED, that the Western States Water Council supports legislation to require the U.S. Army Corps of Engineers to comply with substantive and procedural state law as it relates to development, use, control, appropriation, storage, and distribution of the States' surface waters, including natural flows, similar to the U.S. Bureau of Reclamation.

BE IT FURTHER RESOLVED, that any policy of the U.S. Army Corps of Engineers to require storage contracts to access natural flows within a reservoir boundary would be a violation of the States' rights to develop, use, control, and distribute surface water.

BE IT FURTHER RESOLVED, that the Western States Water Council opposes any and all efforts that would diminish the primary and exclusive authority of States over the allocation of surface water.