



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
on
STATE PRIMACY OVER GROUNDWATER
Washington, DC
March 14, 2024**

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

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; and

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, that 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.

Revised and Readopted
(see former Position No. 466, March 25, 2021, and 422, March 14, 2018)