



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westernstateswater.org

April 18, 2024

The Honorable Sam Graves, Chair
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable Rick Larsen, Ranking Member
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Graves and Ranking Member Larsen:

The Western States Water Council (WSWC) is a bi-partisan government entity created by the Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. I'm writing regarding our interest in H.R. 7065, to "include water supply and water conservation as a primary mission of the Corps of Engineers in planning, designing, constructing, modifying, operating, and maintaining water resources development projects, and for other purposes."

Explicitly including water supply and water conservation as part of the U.S. Army Corps of Engineers (Corps) mission offers opportunities for greater federal-state cooperation and collaboration. Water supply storage or conservation of water for later delivery is key to the West's economic prosperity, environmental needs, and our quality of life. Water supply infrastructure is critical to meet our drinking water, as well as other municipal and industrial, irrigation, hydropower, flood control, and fish and wildlife habitat needs. The WSWC supports collaboration and leadership at all levels of government – federal, state, tribal, and local – and the private sector – to address the Nation's infrastructure needs and establish water infrastructure improvements as a public policy priority.

The WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future. Water in the West is an increasingly scarce and precious resource. Water must be recognized as a critical public policy priority given the importance of the resource to our public health, economy, food security, environment, and western way of life. A secure and sustainable water future will be determined by our ability to maintain, replace, expand and make the most efficient use of critical water infrastructure. We must preserve and improve existing infrastructure, as well as encourage and support innovative water supply strategies and new storage options to better balance supplies with demands.

An integrated, collaborative, and grassroots approach to water resources management is critical to the environmentally sound and efficient use of our water resources. States, federal agencies, tribes, and local communities should work together to identify water problems and develop optimal solutions at the lowest appropriate level. The Corps operates and maintains approximately 740 dams nationwide that

provide multiple benefits to many communities, and are critical in many watersheds. Cooperatively operating water projects to protect life and property by reducing flood risks, while at the same time maximizing water supply storage, including carryover storage, impact billions of dollars of economic investments in the West.

The WSWC supports the use of innovative and forecast informed reservoir operations by the Corps and other public and private entities at all levels to maximize the effective and efficient use of our existing and future infrastructure to benefit our myriad and growing economic uses of water, while at the same time balancing and protecting our need for public health and safety, as well as a resilient and healthy environment. Explicitly authorizing the Corps to store water for water supply purposes would further such actions.

The federal government, including the Corps, has a significant role to play in financing and cost-sharing for water-related infrastructure given federal economic and environmental objectives, federal tribal trust and treaty obligations, other past commitments, and federal regulatory mandates.

We appreciate the limitations in Section 2(b)(4), and emphasize the critical importance of not interfering with the “authority of a State to manage, use, or allocate the water resources of that State.” 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. The WSWC opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of surface water, or affect or interfere with any interstate compact, decree or negotiated water rights agreement.

Further, the WSWC supports legislation to require the Corps 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 requirements placed by the Congress on the U.S. Bureau of Reclamation in Section 8 of the Reclamation Act of 1902.

Thank you for your attention to this matter.

Sincerely,



Tony Willardson
Executive Director

Attachments:

WSWC Positions: #476, #509 and #511.

cc: Western Members of the House Committee on Transportation and Infrastructure



**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

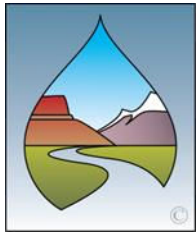
NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council urges the U.S. Army Corps of Engineers to recognize and proceed in conformity with State law related to the development, use, control, appropriation, storage, and distribution of the States' surface waters, including natural flows.

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.

*(formerly Position No. 431, October 26, 2018, 388, October 9, 2015,
and 348, October 12, 2012)*



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
to Support the Use of
FORECAST INFORMED RESERVOIR OPERATIONS and INNOVATIONS
Washington, DC
March 14, 2024**

WHEREAS, Western States experience great variability in precipitation, with serious impacts and consequences for the operation of water projects, particularly aging water infrastructure, as well as water supply and emergency planning and management, drought and flood preparedness and response, and other public and private decisions; and

WHEREAS, decisions to operate water projects to protect life and property by reducing flood risks, while at the same time maximizing water supply storage, including carryover storage, impact billions of dollars of economic investments in the West to maintain and protect municipal and industrial centers, agriculture, hydropower generation, and fisheries; and

WHEREAS, these investments depend on our ability to observe, understand, model, predict, and adapt to precipitation variability on operational time scales ranging from hours to days, weeks and months, seasons and longer; and

WHEREAS, observations, modeling, high-performance computing capabilities, research, and demonstration projects are essential to significantly improving operational forecasting of precipitation to maximize the use of our existing water storage projects to reduce flood damages, mitigate economic and environmental damages, and maximize water storage and water use efficiently; and

WHEREAS, operating aging water infrastructure effectively in the face of growing and often competing water supply and water management and flood protection demands requires that state, federal, tribal, and local agencies optimize operations and seek innovative alternative strategies to support their decision-making; and

WHEREAS, project operations and alternatives may include, but are not limited to, using enhanced forecasting capabilities to better inform reservoir operators, operations, and actions – to dynamically determine reservoir levels to improve storage opportunities, and to alter static reservoir operating rule curves and requirements based on updated hydrologic information; and

WHEREAS, FY20 appropriations legislation directed the U.S. Army Corps of Engineers (USACE) to develop a comprehensive list of water control manuals at Corps-owned projects located in states where a Reclamation project is also located, including a prioritized list of needed updates of those manuals; and

WHEREAS, Section 8109 of WRDA 2022 (P.L. 117-263) authorized USACE to update water control manuals for water resources development projects in states where the governor declared a

statewide drought disaster in 2021, with priority given to projects that include water supply or water conservation as an authorized purpose; and

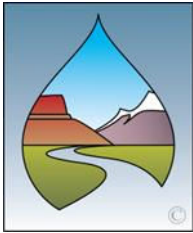
WHEREAS, USACE Engineer and Research Development Center (ERDC) developed a Forecast Informed Reservoir Operations (FIRO) screening process and has tested it in the South Pacific Division; and

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.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports the use of innovative and forecast informed reservoir operations by public and private entities at all levels to maximize the effective and efficient use of our existing and future infrastructure to benefit our myriad and growing economic uses of water, while at the same time balancing and protecting our need for public health and safety, as well as a resilient and healthy environment.

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. 460, March 25, 2021, and No. 417, March 14, 2018)



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
WATER INFRASTRUCTURE FUNDING
Washington, DC
March 14, 2024**

WHEREAS, maintaining and delivering sufficient water supplies of suitable quality is key to the West’s economic prosperity, environmental needs, and our quality of life, both now and in the future; and

WHEREAS, appropriate water-related infrastructure investments ensure our continued ability to store, manage, conserve, and control water during both floods and droughts – as well as protect and treat our water resources; and

WHEREAS, existing and new infrastructure is critical to meet drinking water, municipal and industrial, wastewater treatment, irrigation, hydropower, flood control, interstate compact, tribal settlement, international treaty, and fish and wildlife habitat needs; and

WHEREAS, the West depends on an intricate and aging system of weirs, diversions, dams, reservoirs, pipelines, aqueducts, pumps, canals, laterals, drains, levees, wells, stormwater channels, and water and wastewater treatment and hydroelectric power plants; and

WHEREAS, water infrastructure in the West is financed and maintained under a complex network of state, tribal, local, private, and federal ownership, benefitting a broad segment of water users and other stakeholders;

WHEREAS, inconsistent, inadequate, and untimely funding increases project construction and financing costs, as well as risk, including the failure of critical infrastructure; and

WHEREAS, substantial and sustained investments in water project construction, maintenance, rehabilitation and replacement is necessary and pays long-term dividends to the economy, public health and safety, and the environment; and

WHEREAS, water infrastructure systems require ongoing, thoughtful investments to account for life-cycle costs, and should be managed with planned retirement or replacement in mind; and

WHEREAS, existing federal, state and local programs to publicly finance water-related infrastructure projects are crucial, but insufficient to meet water quality and water resources management challenges related to future growth, including municipal, industrial, agricultural, environmental, and energy needs; and

WHEREAS, the federal government has a significant role to play in financing and cost-sharing for water-related infrastructure given federal economic and environmental objectives, federal tribal trust and treaty obligations, other past commitments, and federal regulatory mandates; and

WHEREAS, aging federal water infrastructure has deteriorated – due to underfunded and deferred maintenance, repair, and replacement needs – and in many cases has exceeded its useful lifespan, raising public health and safety issues, risking loss of life and threatening public and private property; and

WHEREAS, federal financial resources are limited and many authorized federal water infrastructure projects have not been started or remain incomplete for decades due to inconsistent, incremental, or insufficient appropriations; permitting and licensing backlogs; duplicative environmental reviews; litigation delays; and oversight by multiple federal agencies without adequate interagency coordination; and

WHEREAS, current federal budget scoring guidelines assess the full cost of infrastructure investments up front, while disproportionately discounting long-term economic, public health and safety, and environmental benefits – sometimes making new water project investments challenging to justify financially; and

WHEREAS, local water district and state agency investments, private capital markets, performance-based contracting, and other alternatives offer help to close the federal funding, delivery, and maintenance gaps, and meet some of our national water infrastructure needs in partnership with federal agencies; and

WHEREAS, such partnerships have the potential to reduce overall project development costs and risks associated with such capital investments, expedite project delivery and associated water resource benefits, improve efficiencies and cost effectiveness, and maximize the respective strengths of the public and private sectors; and

WHEREAS, opportunities exist to leverage federal and non-federal funding through grants, loans and credit enhancements, as well as provide greater access to private sources of financing; and

WHEREAS, there is no one-size-fits-all program, but several federal financial and technical assistance programs, grants, loans, cost-share programs, and federal-state-local or public-private partnerships have proven beneficial to the timely completion and ongoing maintenance of infrastructure projects at all scales; and

WHEREAS, federal agencies often lack legislative authority to dedicate a sustained revenue stream to assure non-federal investors are fairly compensated for the costs and risks of constructing or maintaining federal water projects, sometimes requiring approval through an act of Congress to proceed.

NOW, THEREFORE, BE IT RESOLVED, that the Council supports collaboration and leadership at all government levels – federal, state, tribal, and local – and the private sector – to address the Nation’s infrastructure needs and establish water infrastructure improvements as a public policy priority.

BE IT FURTHER RESOLVED, that the Council supports appropriate federal investments in water-related infrastructure projects and programs that provide jobs and economic security, while protecting the environment.

BE IT FURTHER RESOLVED, that the Administration and Congress should work together to ensure adequate, stable, and continuing federal appropriations for constructing, maintaining, and replacing critical federal water projects and to assist States and local governments as they address their water infrastructure needs.

BE IT FURTHER RESOLVED, that the Council encourages Congress and the Administration to continue to work together and with States to streamline permitting processes and coordinate environmental and other regulatory reviews to eliminate duplicative procedures, reduce costs of compliance and construction, and ensure timely completion, maintenance, or relicensing of authorized infrastructure projects so vital to the West and the Nation.

BE IT FURTHER RESOLVED, that the Council supports the creation and maintenance of dedicated water infrastructure funding through special accounts with dedicated receipts to be promptly appropriated for authorized purposes following their deposit, as well as a variety of grant, loan, credit enhancement and other financial incentive programs to help meet diverse needs at all scales.

BE IT FURTHER RESOLVED, that the Council supports appropriate infrastructure asset management and capital budgeting.

BE IT FURTHER RESOLVED, that the Council supports a method of congressional budget scoring that considers the unique timing of the costs and benefits of water infrastructure investments, and accounts for long-term public health and safety, economic and environmental benefits, with fair and appropriate discounting.

Revised and Readopted
(see former Position No. 462, March 25, 2021, and No. 419, March 14, 2018)