



**RESOLUTION**  
of the  
**WESTERN STATES WATER COUNCIL**  
regarding  
**WATER TRANSFERS**  
and  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**DISCHARGE PERMITS**  
**West Fargo, North Dakota**  
**July 26, 2024**

**WHEREAS**, the Western States Water Council (WSWC) has long declared its position that the transport of water through constructed conveyances to supply beneficial uses should not trigger federal National Pollutant Discharge Elimination System (NPDES) permit requirements, simply because the transported water contains different chemical concentrations and physical constituents; and

**WHEREAS**, the WSWC supports the ability of each Western State to use available authorities to place appropriate conditions on water transfers to protect water quality; and

**WHEREAS**, the Environmental Protection Agency (EPA) published 40 CFR Part 122.3(i), expressly excluding water transfers from regulation under the NPDES permitting program, and defining water transfers as an activity that conveys or connects waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use; and

**WHEREAS**, the final rule relies on EPA's interpretation of the federal Clean Water Act (CWA) and does not limit any ability of a State to use any available authority, including authority regarding nonpoint sources of pollution, to protect the water quality of the receiving water body in a water transfer;

**WHEREAS**, water transfers and water quality are essential to the social, economic and environmental well-being of the Western States; and

**WHEREAS**, the United States Court of Appeals, in the cases of *Friends of the Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009), and *New York State et al. v. Environmental Protection Agency*, 846 F.3d 492 (2nd Cir. 2017), upheld EPA's Water Transfer Rule, holding it to be a reasonable construction of the CWA and therefore entitled to deference by the Federal Courts and on which decisions the United States Supreme Court subsequently denied Petitions for Writ of Certiorari.

**NOW, THEREFORE, BE IT RESOLVED**, that the WSWC generally supports EPA's amendment to its CWA regulations as codified in 40 CFR 122.3(i).

**BE IT FURTHER RESOLVED**, that the WSWC supports the use by a State of available authorities to protect the water quality of the receiving water body in a water transfer.

**BE IT FURTHER RESOLVED**, that the WSWC supports the codification of 40 CFR 122.3(i) into statute by the Congress.

*Revised and Readopted*  
*(See also Position No. 469, June 25, 2021; No. 424, August 13, 2018; No. 382, July 10, 2015;*  
*No. 342, June 8, 2012; No. 316, July 17, 2009, and No. 278, July 21, 2006)*