**WESTERN STATES WATER COUNCIL**

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*Web Page: www.westernstateswater.org*

November 6, 2026

The Honorable John Thune
Senate Majority Leader
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Schumer
Senate Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

**Re: Comments on the Bipartisan American Affordability and Jobs Act of 2026**

Dear Senators Thune and Schumer:

The Western States Water Council (WSWC) is a government entity composed of Governor-appointed representatives from western states who are responsible for water policy and resource management. Our 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. We are writing to express our views regarding the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA).

In our position on western water infrastructure, WSWC's member states ask Congress to "streamline permitting, relicensing, and regulatory review while protecting environmental resources and preserving state authority" (Position #2026-02). WSWC therefore appreciates BAAJA's aim of making federal permitting faster and more predictable. Our member states implement the majority of Clean Water Act (CWA) programs as co-regulators with U.S. Environmental Protection Agency (EPA) (Position #2026-05).

BAAJA would amend a wide range of federal laws, including the CWA, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Federal Power Act (FPA). As Congress considers these changes, we note our member states' position that "[n]othing in any act of Congress should be construed to displace state water law," and that federal legislation "should not preempt, erode, or interfere with state laws governing the management, appropriation, protection, use, or distribution of water" (Position #2026-04).

WSWC urges Congress to ensure that BAAJA's permitting reforms make regulatory reviews more efficient and predictable while protecting environmental resources and preserving state authority (Position #2026-02). Congress should give particular consideration to the perspectives of western governors and state water officials, including those expressed through organizations such as WGA, ECOS, and WSWC. As our member states have recognized, "States are primarily responsible and accountable for their own water development, management, and protection challenges, and are in the best position to identify, evaluate, and prioritize their needs, and plan and implement strategies to meet those needs" (Position #517).

## Section 1203: NPDES Permit Terms

Section 1203 would raise the maximum term for permits issued by authorized state National Pollutant Discharge Elimination System (NPDES) programs from five years to up to ten. WSWC supports amending 33 U.S.C. 1342(b)(1)(B) so that NPDES permits "are for fixed terms not exceeding 10 years," provided existing authority to reopen permit terms based on current law is retained (Position #527).

A ten-year maximum would give states discretionary authority to set an appropriate permit length during the permit writing process. That flexibility would help states make the most of limited resources and better plan and invest in new technologies, facilities, and watershed-based approaches, since many water quality infrastructure investments extend beyond five years. It would also support state efforts to reduce permit backlogs. Permits already contain clauses to reopen, amend, or modify them following proper administrative procedures (40 CFR 122.62 and 124.5), so permitting authorities can respond to changes in standards, technologies, and water quality needs before a permit expires.

WSWC supports § 1203's authorization of NPDES permit terms of up to ten years, provided states retain the discretion to establish shorter permit terms as appropriate and existing authority to reopen, amend, or modify NPDES permits under current law is retained.

## Section 1202: State Water Quality Certification

Section 1202 would significantly change how states carry out § 401 certifications. Under existing law, states may condition certifications to assure compliance with "any other appropriate requirement of State law" (§ 401(d)), and the Supreme Court has upheld state certification conditions protecting designated uses, including minimum stream flows (*PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994)). Section 1202 would limit certification reviews and conditions to "water quality requirements," defined by specified CWA provisions and laws implementing them as applicable to discharges into waters of the United States (WOTUS). For certain interstate natural gas pipeline and electric transmission projects, certification would be further limited to "direct point source discharges," with a maximum nine-month review period. Currently, certification decisions are generally reviewed in state court, where state law may set the burden of proof. Section 1202 would require states to substantiate certification denials and conditions with "clear and convincing" evidence and demonstrate that conditions are the "least burdensome" necessary to ensure compliance.

Our member states are co-regulators for water quality programs, not merely stakeholders. WSWC's positions recognize states' primary responsibility for water quality protection within their borders and their authority over water allocation under §§ 101(b) and 101(g) (Positions #2026-04 and #2026-05). More specifically, Position #521, supports preserving state authority to protect water quality and designated uses, including through minimum streamflow conditions where necessary, while facilitating efficient federal permitting.

Section 1202 would affect every state's certification program, and our member states' views on the appropriate scope of certification are not uniform. Nevertheless, the proposed limitations raise significant questions about states' continued authority to address water quality impacts from diversions and other hydrologic modifications, including effects on streamflows, temperature, and designated uses. The bill also leaves existing 401(d) language largely intact while establishing potentially conflicting

limitations on certification conditions. Moreover, the heightened evidentiary standards and undefined terms, including "direct point source discharge" and "lease burdensome," could increase administration burdens, litigation risks, and costs for states.

WSWC encourages Congress to clarify how Section 1202 would preserve states' ability to protect water quality and designated uses, including through appropriate conditions addressing hydrologic modifications, and to reconcile the proposed limitations with existing Section 401(d). Congress should also carefully consider the practical implications of the proposed evidentiary standards and certification deadlines for state programs. Recognizing the differing perspectives among our members states, WSWC encourages Congress to consult closely with states as co-regulators, consistent with §§ 101(b) and 101(g), and to ensure that permitting reforms do not unnecessarily diminish state authority or impose additional unfunded responsibilities (Position #527).

## Section 1204(b): General and Nationwide Permits

Section 1204 would treat a project as having minimal adverse effects if it places dredged or fill material into less than 2 acres (as measured by the impacted streambed) of WOTUS as having minimal adverse effects, extend general permit terms from five years to up to ten, and require the U.S Army Corps of Engineers (Corps) to keep five nationwide permits for pipelines, transmission, transportation, stormwater, and utility lines. For those five permits, the bill would raise the existing dredge or fill limit of generally ½ acre for minimal adverse effects up to 2 acres per project. The Congressional Research Service (CRS) analysis (R49492) expects more projects to qualify for general permits as a result. CRS also notes that the bill could limit the ability of Corps division and district engineers to modify or revoke nationwide permits to address adverse impacts from discharges into less than 2 acres and raises questions about the scope of environmental effects the Corps may consider.

Our positions call for predictability in permitting, greater collaboration with states in issuing CWA § 404 permits, and support for states that choose to administer federal programs (Position #2026-05). They also recognize that "a one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West" (Position #531).

WSWC asks Congress to clarify when individual permits may still be required for projects below the two-acre threshold and to preserve the Corps' ability to modify nationwide permits regionally to account for western conditions and consider relevant environmental impacts. Congress should also clarify that these changes do not diminish the permitting authority of states administering § 404 programs and should consult closely with states as the changes are implemented.

## Section 1201: Water Quality Criteria and Judicial Review

Section 1201 would require EPA to develop national recommended water quality criteria under CWA § 304(a) through notice-and-comment rulemaking, rather than its current non-regulatory public notice process. Section 1201 would also provide for direct review in the federal courts of appeals of EPA's final § 304(a) criteria and actions defining "WOTUS," subject to a 120-day filing deadline.

Our positions recognize that states may adopt or modify these criteria or replace them with their own, including narrative criteria, and call for early engagement with states on CWA rules (Position

#2026-05). They also recognize that any federal effort to clarify CWA jurisdiction "will inevitably impact each state differently" (Position #531).

Criteria issued by rule could look more like binding standards, court challenges could delay criteria states rely on, and states would bear new costs to take part in these proceedings. The change could also affect state programs that rely on criteria, including water quality certifications, water quality-based permits, total maximum daily loads, and nonpoint source programs.

WSWC affirms that § 304(a) criteria should remain recommendations that states may adopt, modify, or replace with their own criteria, including narrative criteria. WSWC encourages Congress to consult with states and to consider the financial and procedural impacts of these changes on state programs (Position #2026-05 and #527).

## Sections 2231 and 2233: Hydropower Operations

Section 2233 would allow hydropower licensees to perform routine maintenance, repairs, and replacements, and temporarily change operations in circumstances beyond their reasonable control, such as extreme weather or equipment failure, without prior Federal Energy Regulatory Commission (FERC) approval. Section 2231 would direct FERC, in consultation with the Secretary of Energy, to report on market barriers to hydropower, including state laws and policies.

Our positions support efficient permitting for reasonable hydropower projects, consistent with state law and authority delegated under federal law (Position #529), and call for substantive consultation with states (Position #2026-04).

WSWC asks Congress to clarify that temporary operational variances under § 2233 do not override state water law, applicable § 401 certification conditions, or other state requirements, and to require FERC to consult affected states in preparing its report under § 2231.

## Geothermal Provisions

BAAJA includes provisions to expand geothermal energy development, largely by speeding federal leasing and permitting on federal land (Secs. 2221 to 2229). Section 2225 would eliminate the federal drilling permit requirement for geothermal exploration and production on non-federal surface lands where the United States owns less than half of the subsurface geothermal estate, provided the operator obtains a state permit, and Section 2228 would have Interior update its geothermal leasing and permitting procedures after consulting federal agencies and "outside stakeholders, including developers."

Our member states recognize that hydrothermal resources "are primarily found in arid western states," and that states "have exclusive authority over the appropriation and adjudication of water rights for all uses, and the allocation of water for energy development" (Position #535). They have also called for decisions on siting energy projects to consider their effects on water (Position #512).

WSWC appreciates § 2225's reliance on state permits and asks Congress to expressly include affected states among the parties Interior must consult under § 2228(c) when updating its geothermal leasing and permitting procedures. Such consultation would help ensure that federal guidance accounts for water availability and allocation under state law (Position #2026-04).

## Other Provisions WSWC Supports

### Section 1204(a): EPA CWA § 404(c) Authority

Section 1204 would limit the period during which EPA may exercise its authority under CWA § 404(c), beginning when an applicant submits a complete permit application and ending when the Corps issues the permit.

In our position on state water quality programs, WSWC has urged EPA to "expressly limit its § 404(c) veto power to the period between the Corps' intent to issue a permit and its final issuance" (Position #2026-05).

WSWC appreciates § 1204's proposed limitation on EPA's Section 404(c) authority as a step toward the narrower window advocated by our member states in Position #2026-05.

### Section 1102: Water Infrastructure and State Revolving Funds

Among other changes, § 1102 would exclude several categories of activity from the definition of "major Federal action" under NEPA , including three categories relevant to western water infrastructure, meaning they would no longer trigger NEPA review. The first is the repair or replacement of "lifeline infrastructure" that keeps its original function and adds no more than 20 percent capacity. The second is Corps continuing authority and environmental infrastructure projects with a federal share of $50 million or less, including projects under § 595 of the Water Resources Development Act (WRDA) of 1999. The third is certain federal financial assistance, including State Revolving Fund (SRF) capitalization grants, where the federal agency does not exercise predominant control over how the financial assistance is used or the environmental effects of the action.

Our positions urge Congress and the Administration to expedite permitting for authorized rural water and related projects, and support streamlined permitting that moves projects forward while protecting environmental resources and taxpayers (Position #2026-02). They also call for keeping states in the lead on identifying priorities and administering SRF assistance through their respective intended use plans, and for reducing federal restrictions that slow project delivery (Position #2026-03).

Section 1102 could advance those goals for qualifying water infrastructure repairs, eligible Corps water-related projects, and certain SRF-assisted projects, without eliminating states' intended use plans, state environmental review processes, or other applicable permitting requirements.

WSWC supports streamlined review that moves water infrastructure repairs, authorized rural water projects, and SRF-funded projects forward while appropriately protecting environmental resources, preserving state authority, and keeping states in the lead through their intended use plans.

### Section 1205: Review of State Section 404 Programs

Section 1205 would require any challenge to EPA's approval of a state permit program under CWA § 404 to be filed within 150 days of the approval, with similar limits for challenges to individual and general permits.

In our position on state water quality programs, WSWC asks EPA to build on cooperative federalism by "supporting states' efforts to seek primacy of federal programs when they choose to do so and making it a priority to help states through that process" (Position #2026-05).

WSWC supports § 1205's 150-day deadline for challenging EPA's approval of a state CWA § 404 program, which would provide greater certainty for states to choose to assume administration of the program.

**Section 2215: Abandoned Hardrock Mine Fund**

Section 2215 would direct new hardrock mill site maintenance fees and receipts from hardrock mineral leases on federal lands to a new Abandoned Hardrock Mine Fund for the reclamation of abandoned hardrock mines on federal lands. The Government Accountability Office (GAO) estimates that more than 530,000 abandoned hardrock mine features have been identified or may exist on federal lands.

WSWC supports increased federal funding and workforce resources to address the backlog of abandoned hardrock mines "through both federal and state programs, with a priority on those sites that are contributing to CWA § 303(d) impaired waters or have been otherwise prioritized by states" (Position #526).

WSWC supports establishing the Abandoned Hardrock Mine Fund under § 2215 to provide a dedicated source of reclamation funding and encourages prioritizing projects that address impaired waters and other cleanup needs identified by states (Position #526).

**Closing**

WSWC appreciates your consideration of these comments on BAAJA and welcomes the opportunity to work with you and your staff as the legislation moves forward. Please contact me with any questions.

Sincerely,



J.D. Strong
Executive Director
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Attachments: WSWC Positions

cc: The Honorable John Barrasso, Senate Majority Whip
The Honorable Shelley Moore Capito, Chair, Senate Committee on Environment and Public Works
The Honorable Mike Lee, Chair, Senate Committee on Energy and Natural Resources
The Honorable Tom Cotton, Senate Republican Conference Chairman

**WESTERN STATES WATER COUNCIL**
www.westernstateswater.org
**Policy Position #2026-02**

# Support for Critical Western Water Infrastructure Programs and Projects

## Policy Summary

The West depends on a vast, aging network of dams, reservoirs, diversions, canals, pipelines, levees, wells, pumps, treatment facilities, hydropower facilities, and related works to store, move, treat, and protect water. This infrastructure supports drinking water, irrigation, wastewater treatment, flood control, hydropower, recreation, fish and wildlife habitat, and fulfillment of interstate compacts, tribal settlements, and other legal obligations.

Federal water infrastructure programs and projects are critical to the states. They should be treated as core public health, public safety, and water management infrastructure, not as optional or intermittently funded programs.

### Senate Committees of Jurisdiction
- Agriculture, Nutrition & Forestry
- Energy & Natural Resources
- Environment & Public Works
- Homeland Security

### House Committees of Jurisdiction
- Agriculture
- Homeland Security
- Natural Resources
- Transportation & Infrastructure

### Relevant Appropriations Subcommittees
- Agriculture, Rural Development, & FDA
- Energy & Water Development
- Homeland Security

### Relevant Federal Agencies
- Federal Emergency Management Agency
- Natural Resources Conservation Service
- U.S. Army Corps of Engineers
- U.S. Bureau of Reclamation
- USDA Rural Development

## WSWC Urges Congress and the Administration to:

### 1. Fully fund and use the Reclamation Fund for its intended western water purposes.

Fully appropriate annual Reclamation Fund receipts for authorized purposes and evaluate converting the Fund to a true revolving trust fund, ensuring receipts are promptly reinvested in western water infrastructure.

### 2. Provide stable, adequate funding for critical water infrastructure.

Support construction, maintenance, repair, rehabilitation, modernization, replacement, and safety improvements for aging federal and non-federal water infrastructure, including Reclamation, USACE, NRCS, state, local, and other essential facilities.

*The **Western States Water Council (WSWC)** is a government entity representing western state water agencies with members appointed by their respective governors. 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.*

### 3. Accelerate completion of authorized projects, especially those serving rural and tribal communities.

Expedite funding, permitting, and construction for authorized rural water supply and related projects, including those tied to tribal trust and settlement obligations and protection of public health.

### 4. Improve federal water infrastructure financing and budgeting.

Expand effective financing tools and partnerships, and reform budget scoring that currently undervalues long-term economic, public health, safety and environmental benefits.

### 5. Strengthen federal-state partnership in water infrastructure decisions.

Respect state water law and regulatory authority, improve coordination and transparency, and ensure strong state involvement in project development, safety oversight, and transfer of federal facilities.

## Core Message

In the West, water infrastructure is the physical backbone of water supply reliability, public safety, economic productivity, environmental stewardship, and community resilience. Delayed investment and fragmented federal processes increase risks and costs over time.

## What WSWC Is Asking For

1. Fully appropriate Reclamation Fund receipts for authorized western water purposes and evaluate a revolving-fund structure.

2. Provide stable appropriations for water infrastructure construction, maintenance, repair, rehabilitation, modernization, replacement, and safety, including dam safety, levee safety, watershed rehabilitation, and related hazard-mitigation programs.

3. Expedite authorized USDA rural water supply projects and ensure small, rural, and tribal communities can access financial and technical assistance needed to protect public health. (See also WSWC Position No. 496 re Clean and Drinking Water SRFs).

4. Support financing tools, grants, loans, credit enhancements, and partnerships that help close infrastructure funding gaps, and reform budget scoring to better account for the long-term benefits of water infrastructure investments.

5. Streamline permitting, relicensing, and regulatory review while protecting environmental resources and preserving state authority.

6. Improve federal processes for evaluating, reporting, and communicating maintenance, repair, rehabilitation, and safety risks.

7. Require careful, project-by-project evaluation of any federal water and power asset transfers, with strong state involvement and protections for state water law and water rights.

## Closing Statement

WSWC supports a strong federal-state partnership to ensure that the West and the Nation have the water infrastructure, financing tools, safety programs, and delivery mechanisms needed to store, move, treat, and protect water reliably and safely. These investments are foundational to public health, public safety, economic security, environmental stewardship, and the long-term resilience of western communities.

*Nothing in this position is intended to alter or affect the authority of western states over the allocation, administration, development, or protection of waters within their borders, or the interpretation or application of any interstate compact, court decree, international treaty, tribal settlement agreement, or state water law.*

# Supporting Documentation

## Why This Matters

In the West, water is a vital and scarce resource. The ability to store, move, conserve, treat, and protect water depends on physical infrastructure that supports communities, agriculture, industry, energy production, environmental stewardship, and public safety.

Across the West, much of this infrastructure is aging, in many cases has exceeded its original design life, and faces growing stress from deferred maintenance, inadequate and inconsistent funding, hydrologic extremes, rising construction costs, and increasing demands on water systems. Delays in project construction, rehabilitation, and replacement increase long-term costs and risks.

Water infrastructure in the West is financed, owned, operated, and maintained through a complex mix of federal, state, tribal, local, and private arrangements. Federal investment remains essential because of longstanding federal project commitments, tribal trust and settlement obligations, flood control and public safety responsibilities, environmental mandates, and the national economic value of western water and power systems.

Small, rural, and tribal communities often face the most acute challenges. Many struggle with aging or inadequate drinking water and wastewater systems, limited technical capacity, contamination concerns, water shortages, and barriers to financing. In some places, communities still haul water over long distances or face decades-long waits for authorized project completion.

Water infrastructure investments produce substantial public benefits. They protect lives and property, support food and energy production, enable economic development, improve public health, help states meet legal and regulatory obligations, and reduce long-term risks and costs.

## Priority Federal Programs and Infrastructure Needs

WSWC supports strong federal investment, partnership, and policy reform in the following categories of water infrastructure programs and needs.

### A. Reclamation Fund and dedicated western water infrastructure funding

The Reclamation Fund was created to finance the conservation, development, and wise use of western water resources using receipts generated from western lands, water, and power. WSWC supports full appropriation of Reclamation Fund receipts for their intended purposes and supports evaluating whether the Fund should operate more like a revolving trust fund so annual receipts can be promptly used for authorized projects and programs.

Dedicated and reliable funding is especially important for major capital construction, dam safety, extraordinary maintenance, rehabilitation of aging facilities, rural water supply projects, and facilities constructed as part of congressionally approved tribal water rights settlements.

## B. Construction, maintenance, repair, rehabilitation, and replacement of aging infrastructure

The West depends on a large inventory of aging federal and non-federal infrastructure, including Reclamation and USACE facilities, NRCS watershed dams, local treatment systems, and other works that are critical to water supply, flood control, hydropower, irrigation, and environmental management.

WSWC supports adequate and reliable federal funding for construction, maintenance, repair, rehabilitation, modernization, and replacement of critical water infrastructure, together with better asset management and long-term capital planning. Water infrastructure should be managed with life-cycle costs, planned retirement, and replacement needs in mind, rather than chronic deferral of major investments.

## C. Water infrastructure funding, financing, and budget reform

Federal, state, and local funding programs remain essential, but they are not sufficient on their own to meet the West's infrastructure needs. WSWC supports a broad portfolio of funding and financing tools, including grants, loans, loan guarantees, credit enhancements, cost-share programs, and public-private or federal-state-local partnerships where appropriate.

WSWC also supports reform of congressional budget scoring practices that assign full costs up front while undervaluing the long-term public health, safety, economic, and environmental benefits of water infrastructure investments. Better budgeting and scoring would improve the federal government's ability to justify and deliver sound projects in a timely manner.

## D. Dam safety and rehabilitation

Safe operation and maintenance of dams and related infrastructure is critical to preventing loss of life, mass evacuation, destruction of property and public facilities, contamination, and worsening water-supply impacts.

WSWC supports continued and increased funding for dam safety programs and rehabilitation needs across federal and non-federal systems, including:

- Reclamation's dam safety program under the Reclamation Safety of Dams Act;
- FEMA's National Dam Safety Program;
- FEMA's High Hazard Potential Dam Rehabilitation Grant Program;
- FEMA hazard mitigation assistance programs;
- the USACE Corps Water Infrastructure Financing Program; and
- the NRCS Watershed Rehabilitation Program.

WSWC also supports continued coordination between federal and state dam safety programs and recognizes the essential role of state dam safety agencies in protecting non-federal dams and helping direct limited resources to the highest priorities.

## E. Levee safety and related flood-risk infrastructure

Floods remain among the Nation's most frequent and costly natural hazards. WSWC supports implementation and improvement of a national levee safety program, including adequate resources for

inventory, inspection, risk-informed standards, and other statutory requirements under the National Levee Safety Act, WRRDA 2014, and related authorities.

Such a program should improve the safety of levees, flood walls, and flood-water conveyance canals, while recognizing that water supply canals serving irrigation or municipal and industrial water systems should not be swept into levee safety requirements that were not designed for those facilities.

### F. Standardization and transparency for infrastructure risk and MR&R needs

Congress, the Administration, states, and project partners need accurate, timely, and accessible information on maintenance, repair, rehabilitation, and safety needs in order to prioritize investments and manage long-term risk.

WSWC supports standardized federal processes for evaluating and reporting MR&R and safety needs, including facilities operated under contract. Federal agencies should provide consistent, up-to-date, understandable information regarding estimated costs, risk levels, and relative priority, and should actively exchange that information with non-federal operating entities, state policymakers, and the public.

WSWC also supports improved hazard classification, asset management criteria, and transparent reporting on dam and levee safety risks.

### G. Rural water supply projects and community water infrastructure needs

Many small, rural, and tribal communities across the West face serious water supply shortages, infrastructure deterioration, water quality problems, and limited access to financing or technical expertise. WSWC supports federal and state legislative and administrative actions to authorize, fund, and implement rural water supply projects and related infrastructure improvements that enhance water supplies, protect public health, and promote economic development.

WSWC supports appropriations sufficient to undertake appraisal investigations and feasibility studies for new rural water projects, and supports streamlined permitting and financing tools that help move authorized projects forward while appropriately protecting environmental resources and taxpayers.

Because project delays sharply increase costs, WSWC strongly supports action to expedite completion of authorized rural water supply projects, especially where those projects are linked to federal trust or settlement obligations.

### H. Rural water and wastewater technical and financial assistance

USDA Rural Development and its Water and Environmental Programs are critical to many small, rural, tribal, and colonial communities that cannot access private credit or other federal assistance on workable terms. These programs help communities finance drinking water, wastewater, sanitary waste disposal, stormwater, and related infrastructure, and they provide technical assistance and training that many small systems need.

WSWC supports careful federal attention to the needs of small, rural, and tribal communities and urges Congress and the Administration to ensure these communities have access to sufficient technical and financial assistance to meet public health goals and federal drinking water and wastewater mandates.

## I. Federal-state partnership and state-centered implementation

States hold primary responsibility for water resource development, administration, and protection. The federal government has a complementary role in financing and cost-sharing infrastructure, fulfilling tribal trust and treaty obligations, honoring commitments to project sponsors and water users, supporting public safety, and helping set baseline safety standards.

WSWC supports water infrastructure policies and decisions that are developed in partnership with the states, are consistent with state water law and regulatory authority, and recognize that federal and state programs must be coordinated to deliver the most efficient and effective solutions.

This is especially important when communities must secure new supplies, acquire necessary state water rights, or integrate federal project actions with state water administration and interstate compact compliance.

## J. Transfer of federal water and power facilities

Some federal water and power asset transfers may offer important benefits, but many are complex and involve public interests, third-party rights, multi-purpose facilities, and longstanding repayment and operating arrangements.

WSWC supports careful, project-by-project evaluation of transfers of federal water and power assets and related facilities. Any such transfer should proceed only with strong state involvement and with protections for state water laws, water rights, existing obligations, and the public benefits of the facilities.

## Additional Supporting Context

### A. Infrastructure investments save money over time

The cost of delaying construction, rehabilitation, or replacement of critical water infrastructure rises over time because of inflation, emergency repair risks, public health impacts, and the economic consequences of project delays and infrastructure failure.

### B. Rural and tribal communities face disproportionate burdens

Small systems often face the greatest financial, technical, and compliance burdens. Infrastructure policy should account for geographic isolation, limited economies of scale, workforce shortages, and lack of access to affordable financing.

### C. Safety programs require both federal and state capacity

Federal safety programs are important, but states remain the primary regulators of most dams and key partners in implementation. Strong state capacity is necessary for effective inspections, emergency planning, prioritization, and delivery of federal funds.

### D. Standardized information improves investment decisions

Sound infrastructure investment depends on consistent, transparent information about system condition, risk, deferred maintenance, and long-term needs. Better reporting and shared asset-management criteria improve decision-making for Congress, agencies, states, operating entities, and the public.

### E. Financing flexibility matters

There is no one-size-fits-all approach to water infrastructure finance. Grants, loans, guarantees, cost-share arrangements, dedicated receipts, and carefully structured partnerships all have a role to play depending on project type, ownership, and community capacity.

### F. State authority must remain central

Infrastructure investments and federal project decisions must be carried out in a way that respects state water law, state regulatory authority, interstate compacts, tribal settlements, and other governing legal frameworks.

*Passed unanimously on April 23, 2026 in Washington, DC.*

WESTERN STATES WATER COUNCIL
www.westernstateswater.org
Policy Position #2026-03

# Support for SRFs, WIFIA, and State & Tribal Assistance Grants

## Policy Summary

Safe drinking water and effective wastewater infrastructure financing is essential to public health, economic growth, environmental protection, and the states' ability to carry out delegated federal water programs. The Clean Water and Drinking Water State Revolving Funds (SRFs) remain the most effective and flexible tools for delivering federal water infrastructure assistance because states administer them, set priorities through intended use plans, and can target funding where it is needed most. SRF capitalization grants provided to states support critical funding for water infrastructure to communities. State and Tribal Assistance Grants (STAG) provide necessary funding to states to implement federally delegated Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) programs. The Water Infrastructure Finance & Innovation Act (WIFIA) loans also play an important role for eligible projects, but they should complement, not displace, proven state-led programs.

The need remains substantial. EPA's most recent reports estimate over **$630 billion** in clean water infrastructure and **$625 billion** in drinking water infrastructure needs over the next twenty years.

**Senate Committee of Jurisdiction**
- Environment & Public Works

**House Committees of Jurisdiction**
- Energy & Commerce
- Transportation & Infrastructure

**Relevant Appropriations Subcommittee**
- Interior, Environment & Related Agencies

**Relevant Federal Agency**
- U.S. Environmental Protection Agency

## WSWC urges Congress and the Administration to:

1. **Provide stable, adequate appropriations** for the Clean Water SRF, Drinking Water SRF, WIFIA, and State and Tribal Assistance Grants.
2. **Keep states in the lead** on identifying priorities and administering SRF assistance through intended use plans.
3. **Reduce burdensome and unnecessary federal restrictions** that limit flexibility, increase costs to states and funding recipients, slow project delivery, or make SRF assistance less effective.

*The **Western States Water Council (WSWC)** is a government entity representing western state water agencies with members appointed by their respective governors. 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.*

4. **Use WIFIA to supplement, not replace, SRF funding.**

5. **Protect State and Tribal Assistance Grants**, including Performance Partnership Grants, which support foundational CWA & SDWA programs, timely regulatory actions and reviews, technical assistance, source water protection, and related state program responsibilities.

6. **Avoid reductions to SRFs,** including through congressionally directed spending or other diversions, that reduce state capacity to support priority projects for communities and state program implementation.

7. **Support water workforce recruitment, training, and retention.** A growing wave of retirements and too few new workers threaten the staffing needed to operate and maintain water systems and protect public health and the environment.

## Core Message

Federal water infrastructure policy should continue to support proven, state-led federal funding programs that address community needs; avoid policies and actions that reduce state efficiency and flexibility; and reliably sustain and strengthen the programs that help communities deliver safe drinking water and clean water services.

## What WSWC Is Asking For

1. Maintain and strengthen appropriations for the Clean Water SRF, Drinking Water SRF, WIFIA, and STAG.

2. Preserve state authority to set priorities and manage SRF assistance.

3. Reduce federal mandates and restrictions that weaken SRF effectiveness.

4. Ensure new infrastructure initiatives, community investment projects, and Congressional spending priorities do not come at the expense of SRF capitalization grants.

5. Support workforce development needed to build, operate, and maintain water systems.

## Closing Statement

WSWC supports a strong federal-state partnership to help communities build, repair, and maintain essential drinking water and wastewater infrastructure. Congress and the Administration should provide stable support for SRFs, WIFIA, and STAG, preserve state flexibility, and support the workforce needed to make these investments succeed.

*Nothing in this position is intended to alter or affect the authority of western states over the allocation and administration of waters within their borders, the implementation of delegated or primacy programs under federal law, or the interpretation or application of any interstate compact, court decree, international treaty, tribal settlement agreement, or state water law.*

# Supporting Documentation

## Why Federal Support Matters

States and communities depend on reliable drinking water and wastewater infrastructure financing to protect public health, support economic activity, and meet federal clean water and drinking water requirements. If the federal government expects states and communities to meet those obligations, it should provide dependable financial and technical support.

EPA's most recent national assessments estimate about **$630.1 billion** in clean water and **$625 billion** in drinking water infrastructure needs over the next twenty years. Those figures show the scale of the challenge and the continued need for strong federal-state partnership.

## Why the SRFs, STAG, and WIFIA Matter

The Clean Water and Drinking Water State Revolving Funds are the backbone of federal water infrastructure assistance because they are state-administered, flexible, and built to provide recurring support for priority projects. They help finance planning, design, construction, rehabilitation, and replacement projects across a wide range of communities. The revolving nature of the funds increases state capacity over time. Using historical SRF appropriations for one-time congressionally-directed spending, while supportive of that individual project, diminishes the state capacity to meet a broad spectrum of community needs going forward.

State and Tribal Assistance Grants, including Performance Partnership Grants, remain essential to state implementation of drinking water and water quality programs, including primacy, technical assistance, source water protection, capacity development, and support for small, rural, and tribal communities.

WIFIA is a useful financing tool for very large projects, but it should supplement SRF capitalization grants rather than compete with them. There is no one-size-fits-all program, and the available programs and resources should complement each other in order to support projects at all scales for communities with varied capacities.

## Why Flexibility Matters

Congress has added more conditions and directives to the SRFs over time. While many may be well intended, they can reduce flexibility, increase administrative burdens, raise costs, and divert funds from core infrastructure needs. Federal assistance should support the SRFs' primary purpose, not weaken it. Directed congressional spending can create the same problem by reducing funds available for state-identified priority projects and implementation.

## Why Workforce Development Matters

EPA's recent water workforce report notes that one-third of water utility operators may be eligible for retirement within ten years, while only a small share of the workforce is under age 24. Without trained replacements and enough overlap for mentoring and knowledge transfer, utilities risk losing system-specific expertise needed to maintain infrastructure and protect public health and the environment.

WESTERN STATES WATER COUNCIL
www.westernstateswater.org
Policy Position #2026-04

# Western Water, State Authority, and Cooperative Federalism

## Policy Summary

Western states are characterized by their arid conditions and limited water resources. Western States have longstanding and comprehensive legal systems for allocating these limited supplies, including by applying the doctrine of prior appropriation to provide the foundational certainty for continued growth and prosperity. Water rights are used to benefit the public good while also being recognized, protected, and regulated as a type of property right. The future economic and environmental health of the West depends on the availability of adequate water quantities of suitable quality for myriad uses. States, tribes, local entities, and federal agencies implement various components of water laws, agreements, and management processes. Additionally, interstate compacts, court decrees, international treaties, and negotiated water rights settlements impose obligations that often require nuanced water management to ensure compliance.

These stark western water realities necessitate a specific model of deference and collaboration between states and the federal government. With very limited exceptions, the federal government has recognized and followed western water laws for more than a century, through Congressional statutes, court decisions, and executive orders. Because conditions vary significantly across the West, state-led management allows for more rational and orderly allocation and protection of water resources than unilateral, one-size-fits-all mandates from the federal government. States are in the best position to regulate water supplies according to their unique local economic and environmental conditions.

## WSWC Urges Congress and the Administration to:

1. **Respect state authority over water allocation, use, distribution, and administration within state borders.** Western states are responsible for managing water allocation and use within their borders, including surface water, groundwater, and stored water, regardless of federal infrastructure.
2. **Preserve federal deference to state water law and reject federal interference.** Nothing in any act of Congress should be construed to displace state water law. Federal legislation, regulations, guidance, and policies should not preempt, erode, or interfere with state laws governing the management, appropriation, protection, use, or distribution of water.
3. **Require meaningful, timely, and substantive consultation with western states.** Federal agencies should engage governors, state water agencies, and their appointed

*The **Western States Water Council (WSWC)** is a government entity representing western state water agencies with members appointed by their respective governors. 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.*

representatives early in the development of legislation, regulations, guidance, or other federal actions that have federalism implications for western water.

4. **Require federal water uses to obtain water rights.** All federal water uses, including temporary uses, require a state-based water right, a federal reserved water right, other state authorization for use, or agreement. Federal agencies should not use western water outside those established legal frameworks. Federal waivers on obtaining state permits for federal projects should not apply to the use of western water resources. Continuous communication between states and federal agencies, including through efforts such as WestFAST, should be strengthened to support practical solutions.

## Core Message

Federal deference to state water laws is based on sound principles for managing limited resources. Any federal strategy affecting western water allocation or management must respect the historic recognition of primary state authority, reflect a true state-federal partnership, and provide adequate funding for federal deference and compliance consistent with current federal statutory authorities and regulatory mandates.

## What WSWC Is Asking For

1. Congress is encouraged to pass legislation requiring federal entities to comply with both substantive and procedural state laws, including water use in Western States.

2. Congress is encouraged to appropriate sufficient funding to allow federal agencies to effectively identify, quantify, and substantiate their water rights claims.

3. Policy direction should be given to ensure all federal claims for water rights filed in state courts have a sound basis in fact and law.

4. Federal agencies should be required to pay their fair share of fees and costs associated with adjudicating their claims in state court.

5. Federal agencies should work collaboratively with states to create flexible regulations that do not interfere with state water management.

6. Federal agencies should establish and implement appropriate procedures and processes for substantively consulting with states, governors, and their appointed representatives (such as WSWC) on the implications of their proposals.

## Closing Statement

The federal government has at times introduced federal legislation or proposed regulatory actions that are inconsistent with sound principles of cooperative federalism. Federal agencies have, at times, dismissed these principles by diverting water resources without permits, issuing unilateral mandates, and engaging in rulemaking processes and procedures without collaborating with relevant state water agencies. WSWC supports efforts to improve communication and collaboration at all levels of government.

*Nothing in this position is intended to alter or affect the authority of western states over water allocation and administration within their borders, the implementation of delegated or primacy programs under federal law, or the interpretation or application of any interstate compact, court decree, international treaty, tribal settlement agreement, or state water law.*

***Related position:*** *See WSWC Policy Position #2026-05, State Primacy and Cooperative Federalism for Western State Water Quality Programs, addressing cooperative federalism in water quality and Clean Water Act implementation.*

# Supporting Documentation

## Why This Matters

Western states have distinct legal systems providing for the orderly allocation, administration, use, and protection of surface water and groundwater for domestic, municipal, agricultural, industrial, and environmental purposes. Many hydrologic basins and aquifers are fully appropriated and may be closed to new water diversions. Under prior appropriation laws, “first in time, first in right” generally means that during years of drought, senior water rights are fulfilled first, and junior water rights may not receive water or may only be partially fulfilled.

Additionally, in some basins or aquifers that have been over-appropriated, states have special rules, regulations, or oversight to carefully manage the water resources that remain. States are in the best position to identify, evaluate, and prioritize their needs, and to plan and implement strategies to meet those needs. New federal laws, policies, regulatory initiatives, and directives that threaten the states’ authority to effectively govern water development, protection, conservation, and management within their borders disrupt the appropriate balance of responsibilities within the cooperative federalism framework.

## Why Collaboration Matters

While 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, respecting state authority is fundamental to a sustainable water future. Water security is in the collective public interest. Agencies should prioritize educating leadership and staff on western water rights and state law to prevent actions that hinder or infringe on state authority.

### Federal Deference to Western State Water Law

**The Desert Land Act (1877)**: Recognized by the Supreme Court as the primary act that severed water from public lands, giving states primary authority over surface water and exclusive authority over groundwater appropriations and administration.

**Reclamation Act (1902)**: Section 8 requires the Bureau of Reclamation to proceed in conformity with state laws relating to the control, appropriation, use, or distribution of water.

**Federal Power Act (1935)**: Section 10 affirms that federal licensing for hydropower must respect state water law and established water rights.

**Flood Control Act (1944)**: Explicitly recognizes the rights of states to determine watershed development and protects their rights to natural flows.

**The McCarran Amendment (1952):** 43 U.S.C. §666 requires federal agencies to submit to state court jurisdiction for the adjudication of water rights, acknowledging that state systems are the proper venue for documenting these complex rights. It waives sovereign immunity, ensuring federal agencies follow state procedural law.

**Water Supply Act (1958):** Section 301 recognizes the primary responsibilities of states in developing water supplies, encouraging federal cooperation with this development in the construction and operation of federal water infrastructure.

**Clean Water Act (1972):** Sections 101(b) and 101(g) recognize state authority to protect water quality and allocate water quantities.

**Executive Order 13132 (1999):** Requires federal agencies to “have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications…”

Unquantified federal water rights claims, particularly reserved water rights claims, can lead to contentious, time-consuming, and counterproductive litigation, often resulting in outcomes that do not adequately provide for federal needs or recognize other community needs and interests. Working cooperatively with their federal partners, states have shown that they have the ability and authority to address federal needs regarding surface water and groundwater within existing legal frameworks, including permits and approvals, memoranda of understanding, water rights settlements or compacts, stipulations, and other methods. High-level federal participants with the authority to make binding decisions must be involved in negotiations and mediations to avoid illusory agreements and delays.

Opportunities exist for greater collaboration and cooperation. One example is the preservation of threatened and endangered species through transparent, flexible, voluntary, and effective regulatory protections and restrictions, without unmitigated or uncompensated takings of water rights, or interfering with state management of water resources.

The Western States Federal Agency Support Team (WestFAST) is comprised of 16 federal agencies with water-related responsibilities in the West. It was created pursuant to a recommendation of the Western Governors' Association and the WSWC to foster cooperation and collaboration between the federal agencies, the states, and the state agencies addressing water resource needs. Ongoing communication between WestFAST and WSWC builds strong state-federal relationships that enables collaboration opportunities.

## Regulatory Etiquette

Agencies must follow Executive Order 13132—Federalism by establishing accountable processes and implementing appropriate procedures for meaningful and substantive consultation with states. This should include implementing a system of etiquette that:

A. Avoids the publication of public notices over federal holidays and extends comment periods when states identify a need for more time to provide meaningful feedback;
B. Promotes dialogue with state agencies rather than listening sessions;
C. Provides sufficient notice and context for nationwide briefings to enable state agencies to prepare to meaningfully engage in the conversation;
D. Identifies opportunities where in-person engagement is needed with states, beyond virtual communication; and
E. Includes field visits to western states and tribes to better understand regional and local issues, the various relationships among states and tribes, and how federal rulemaking can address or impact those issues.

## Regulatory Scope: Groundwater

The conditions affecting groundwater supplies, demands, and impairments vary considerably across the West and within individual states. State laws and regulations are specific to the individual hydrologic conditions of their aquifers. States recognize the importance of effective and comprehensive groundwater management and are in the best position to protect groundwater and to allow for the orderly and rational allocation and administration of the resource.

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. The WSWC opposes any efforts to establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law. The regulatory reach of federal statutes and regulations were never intended to infringe upon state or private ownership of, protection of, or control over groundwater, including: 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, Migratory Bird Treaty Act (MBTA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Federal agencies should work cooperatively within state legal frameworks to address federal groundwater needs rather than exerting ownership interests or control.

## Regulatory Scope: Natural Flows

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. It also declared a policy 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' (Corps) dams. Additionally, various western states have the authority and duty to manage permitting of stored water to supplement natural flows. 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 or water service contracts that supplement natural flows. The WSWC urges the Corps to recognize and proceed in conformity with state laws related to the development, use, control, appropriation, storage, and distribution of the states' surface waters, including natural flows. Any Corps policy 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.

## Federal Compliance

Western states use general stream adjudications to determine and document relative water rights within basins, including rights to use water claimed by the United States under state or federal law. These adjudications provide the basis for water rights administration and reduce conflict over allocated uses. The McCarran Amendment (43 USC §666) requires the federal government to submit to state court jurisdiction in such adjudications. These proceedings typically involve hundreds or even tens of thousands of claimants, and federal water rights claims are typically among the largest, most complex, and costly to resolve. Some states use filing fees to reimburse the expenses associated with adjudications. When federal agencies decline to pay filing fees and other costs, especially when filing numerous claims, the costs are shifted to private water users and state taxpayers, draining state resources and significantly inhibiting the ability of both state and federal agencies to conduct adjudications in a timely manner. Prior to a U.S. Supreme Court decision in *U.S. v. Idaho*, 508 U.S. 1 (1992), federal payment of filing fees was a common practice. Requiring federal agencies to pay filing and other fees and costs to follow the same procedures as other water right claimants would help ensure the claims are legitimate, in conformity with state law, and made in good faith. Congress should

appropriate sufficient funding for federal agencies to adequately and effectively identify, quantify, and prepare evidence to substantiate federal water rights claims, ensuring they have a sound basis in fact.

Additionally, states have experienced conflicts associated with the failure of federal agencies to comply with state water permitting requirements. Federal waivers on state permits or state legal requirements, particularly those that are vague or undefined, should not apply to the withdrawal of water resources, particularly where those resources are limited.

*Adopted by the Western States Water Council on October 22, 2026, in Las Cruces, New Mexico, without opposition; Arizona abstained.*

WESTERN STATES WATER COUNCIL
www.westernstateswater.org
Policy Position #2026-05

# State Primacy and Cooperative Federalism for Western State Water Quality Programs

## Policy Summary

Western states are characterized by their arid conditions and limited water resources. Accordingly, they have longstanding and comprehensive legal systems for protecting these limited supplies, including processes to address water quality, that provide the foundational certainty for continued growth and prosperity. The future economic and environmental health of the West depends on the availability of adequate quantities of water of suitable quality.

Western states implement numerous state laws and federally-delegated programs, including the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA), to protect water quality to ensure that western water supplies are suitable for their uses. Many states have their own statutory and constitutional authorities to protect water beyond the limits of federal statutes. Given the significant legal, ecologic, hydrologic, and socioeconomic differences across regions, flexibility and strong state-federal partnerships are vital to effective implementation of both state and federal laws. The framework of cooperative federalism serves as the foundation for environmental governance, recognizing the shared responsibilities between states and EPA while preserving primary state authority over water allocation and pollution control. The WSWC strongly advocates for adhering to these cooperative principles to ensure effective implementation of these programs, to maintain an appropriate balance of state and federal authority, and to foster collaborative relationships between federal agencies and western states.

## WSWC Urges Congress and the Administration to:

1. **Respect the principles of cooperative federalism and apply those principles to build effective partnerships between EPA and western states.** Western states implement the majority of CWA and SDWA programs to protect water quality within their states.
2. **Recognize that cooperative federalism is particularly important to address the diverse needs of western states.** Western states emphasize the need for federal-state relationships that result in implementation of CWA and SDWA programs that effectively protect human health and the environment according to the needs of each western state.
3. **Recognize that states are co-regulators for water quality programs, not stakeholders.** Meaningful, timely, and substantive consultation and communication with western states are critical for effective program implementation. When developing federal rules, policy, and guidance for CWA and

*The **Western States Water Council (WSWC)** is a government entity representing western state water agencies with members appointed by their respective governors. 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.*

SDWA programs, EPA must engage early and often with the states that implement these programs and best understand their implications. Federal agencies should engage governors, state water agencies, and their appointed representatives early in the development of legislation, regulations, guidance, and other federal actions that have federalism implications for western water quality.

4. **Support state decisions for delegated programs.** States are co-regulators with EPA in the effort to protect water quality, and possess additional local knowledge, tools tailored to meet unique local needs, and authority over the protection of waters in their respective states. State decisions are generally practical and reasonable efforts to achieve intended outcomes, and oversight should be objective and outcome-oriented.

## Core Message

Cooperative federalism is critical to successful water quality protection, particularly to address the diverse needs of western states Both state and federal agencies should remain committed to applying the principles of cooperative federalism to best protect public health and the environment.

## What WSWC Is Asking For

WSWC requests that EPA build on existing principles of cooperative federalism by:

1. Supporting states' efforts to seek primacy of federal programs when they choose to do so and making it a priority to help states through that process.

2. Acknowledging and requesting the input of EPA Region 6, 7, 8, 9, and 10 offices, as regional offices work closely with states in their region and can help navigate challenges faced by western states in implementing their programs.

3. Recognizing the importance of WestFAST in implementing and promoting cooperative federalism to best protect water quality in western states.

4. Providing meaningful opportunities for states to address concerns raised by EPA, or meaningful opportunities to resolve disputes with other state, federal, or tribal agencies before EPA makes final decisions that will override a state decision.

5. Improving predictability in permitting and other regulatory processes.

6. Improving EPA's timelines and engagement with states when reviewing state actions.

## Closing Statement

The federal government has at times introduced federal legislation or proposed regulatory actions that are inconsistent with sound principles of cooperative federalism. Federal agencies have, at times, dismissed these principles by engaging in rulemaking processes and procedures without collaborating with relevant state water agencies, and making decisions that unnecessarily hinder western states' effective implementation of federal programs. WSWC supports efforts to improve communication and collaboration at all levels of government.

*Nothing in this position is intended to alter or affect the authority of western states over water allocation and administration within their borders, the implementation of delegated or primacy programs under federal law, or the interpretation or application of any interstate compact, court decree, international treaty, tribal settlement agreement, or state water law.*

***Related position:** See WSWC Policy Position #2026-04, Western Water, State Authority, and Cooperative Federalism, addressing cooperative federalism in western water allocation, water rights, and administration.*

# Supporting Documentation

## Why This Matters

Cooperative federalism is a foundational principle of environmental governance in the United States. EPA and states share a collective mission of protecting human health and the environment.

Cooperative federalism was a constitutionally based tenet when the CWA and SDWA were established in the United States in the 1970s, and nationally, states have assumed more than 95% of delegable federal environmental authorities. For example, the CWA envisioned state and federal partners working together with shared responsibilities. Section 101(b) explicitly preserves the primary responsibility of states to address pollution within their borders, and section 101(g) acknowledges the critical importance of balancing water quality protection in a way that does not interfere with state authority to allocate water. Section 101(g) further directs federal agencies to cooperate with state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

States are best positioned to protect and manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology and legal frameworks. The federal government should acknowledge states as valued partners with the experience to help inform any legislative or regulatory changes to accomplish mutual objectives. Rather than attempt to dictate water policy, the federal government should engage states early in meaningful consultation, seek to understand state priorities, and contribute its fair share of funding to support implementation of state water planning and management, thus avoiding, or at least minimizing, the need for federal regulatory mandates.

The federal government should explicitly recognize and support ongoing state, tribal, and local watershed management efforts through appropriate technical and financial assistance. Strong

### Federal Deference to Western State Water Law

**Clean Water Act (1972):** Sections 101(b) and 101(g) recognize state authority to protect water quality and allocate water quantities. 101(g) further directs federal agencies to cooperate with state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

**Safe Drinking Water Act (1974):** Section 3 commits the federal government to maintaining and improving its partnerships with the states in implementing the SDWA, and section 4 acknowledges both the central role of states in SDWA implementation, and the need of states for increased financial resources and appropriate flexibility for implementation.

**Executive Order 13132 (1999):** Requires federal agencies to "have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications…"

***P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994):** The Supreme Court upheld a state's delegated authority to impose minimum stream flow conditions under the CWA Section 401 certification process where necessary to protect a designated use for fish habitat, expressly rejecting any implied limitations on Section 401 certifications based on the First Iowa interpretation of the Federal Power Act.

state-federal relationships will result in more effective implementation of programs that protect human health and the environment according to the needs of each state.

The WSWC supports regulations that strengthen the deference to state water laws and do not diminish the primary state authority and responsibility for the appropriation, allocation, development, conservation, and protection of their water resources, including minimum streamflows, groundwater, and the protection of water quality and designated uses. Notably, the CWA was not intended to and should not be applied to the management and protection of groundwater resources contravening state water law, policies and programs.

The ecologic, hydrologic, geophysical, and socioeconomic differences within western states and between western and eastern states make the flexibility and partnerships intended by cooperative federalism of utmost importance to western states in their implementation of CWA and SDWA programs. Adhering to cooperative federalism principles in the federal-state relationship will help maintain an effective balance of state and federal authority in western states' implementation of CWA and SDWA programs. The WSWC continues to unequivocally advocate for the principles of cooperative federalism and for applying those principles to build strong and effective relationships between EPA and western states.

Finally, while cooperative federalism is important for all CWA and SDWA programs, WSWC particularly urges EPA to reinvigorate the principles of cooperative federalism in the following programmatic areas, given challenges that some western states are experiencing or have experienced in the past.

- **Section 404(c) Veto Authority:** WSWC recognizes there is a continuing need for greater collaboration between and among federal agencies, state agencies, local governments, and public/private organizations and businesses in the issuance of CWA § 404 permits and § 401 certifications. Within the existing regulatory framework, it is imperative that the EPA exercises its § 404(c) veto authority judiciously and consistent with applicable laws and regulations, the 1992 Memorandum of Agreement between EPA and USACE (as directed by CWA § 404(q)), and the principles of cooperative federalism. Past inconsistent EPA actions regarding § 404(c) veto authority and permitting protocols have created uncertainty and challenges for state engagement and public and private investment. WSWC urges EPA to adhere to established protocols and expressly limit its § 404(c) veto power to the period between the U.S. Army Corps of Engineers' intent to issue a permit and its final issuance. EPA must meaningfully consult with affected state environmental agencies prior to taking action under 404(c). If EPA considers promulgating regulations and guidance to improve predictability and communication in the 404(c) veto process, WSWC urges EPA to meaningfully engage with state environmental agencies during that rulemaking.
- **Review of State Water Quality Standards:** The Western States Water Council (WSWC) urges the Environmental Protection Agency (EPA) to improve the consistency and timeliness of its water quality standards reviews. Under Clean Water Act (CWA) Section 303(c)(2)(A) and 40 CFR § 131, water quality standards consist of designated uses, criteria to protect those uses, and antidegradation policies. CWA Section 304(a) requires the EPA to publish recommended national water quality criteria. While 40 CFR § 131.20 directs states to review these recommendations and explain any decision not to adopt them, states retain broad discretion to adopt Section 304(a) criteria, modify them for site-specific conditions, or establish narrative

criteria. Given this statutory latitude, WSWC requests that EPA grant strong deference to state determinations of scientifically sound standards. Additionally, CWA Section 303(c) requires the EPA to approve submitted standards within 60 days or disapprove them within 90 days. WSWC urges strict adherence to these statutory deadlines. To streamline the review process, WSWC supports early collaboration between states and the EPA. During pre-submission discussions, the EPA should clearly distinguish between mandatory regulatory deficiencies and non-binding recommendations.

- **Review and Approval of State 303(d)/305(b) Integrated Reports:** Sections 305(b) and 303(d) of the Clean Water Act (CWA) require states to submit a comprehensive biennial water quality report and list of impaired waters to the EPA by April 1st of even-numbered years. Under Section 305(b) and 40 CFR § 130.8, the report must assess overall water quality and report on the elimination of pollutants necessary for designated use support. Under Section 303(d) and 40 CFR § 130.7, states must identify waters failing to meet designated use standards, submit a prioritized list of impaired and threatened waters for EPA approval within 30 days, and establish Total Maximum Daily Loads (TMDLs) to calculate maximum allowable pollution levels for listed waters. States have considerable discretion in how they assess surface waters and identify impaired waters not supporting their designated uses, in accordance with approved water quality standards, assessment methods, and quality assurance/quality control requirements. As part of its oversight authority, EPA can add waterbodies or pollutants to a state's submitted list of impaired waters, overriding the state's initial assessment (a process referred to as overlisting). The WSWC urges the EPA to respect state assessment procedures and recognize that states manage and fund the restoration of impaired waters. Consequently, the EPA should resort to overlisting sparingly and only after engaging in thorough collaboration with the affected state.
- **Supporting State CWA Program Authority in Lands of Exclusive Federal Jurisdiction:** Under the 2023 Section 401 Rule, EPA asserted direct Section 401 certifying authority across 16 national parks and other areas classified as "lands of exclusive federal jurisdiction." This decision stripped several states of their long-standing authority to administer Section 401 certifications without prior consultation or post-promulgation outreach from the EPA. Similar shifts away from state authority have also affected Clean Water Act (CWA) Section 402 permitting and Section 303 water quality standards, ultimately diminishing environmental protections for the parks and undermining principles of cooperative federalism. To address these concerns, the WSWC urges the EPA and Congress to identify pathways for willing states to preserve their environmental program authority on lands of exclusive federal jurisdiction, including establishing concurrent jurisdiction with the Department of the Interior.

## WestFAST

One way to improve communication between the federal agencies and the western states is ongoing engagement through the Western States Federal Agency Support Team (WestFAST). WestFAST is comprised of 16 federal agencies with water-related responsibilities in the West. It was created in 2008 pursuant to a recommendation of the Western Governors' Association and the WSWC to foster cooperation and collaboration between the federal agencies, the states, and the state agencies in addressing water resource needs. Ongoing communication between WestFAST and WSWC builds strong state-federal relationships that enables opportunities for collaboration.

## Regulatory Etiquette

Agencies must follow Executive Order 13132 (Federalism) by establishing accountable processes and implementing appropriate procedures for meaningful and substantive consultation with states. This should include implementing a system of etiquette that:

A. Avoids the publication of public notices over federal holidays and extends comment periods when states identify a need for more time to provide meaningful feedback;
B. Promotes dialogue with state agencies rather than listening sessions;
C. Provides sufficient notice and context for nationwide briefings to enable state agencies to prepare to meaningfully engage in the conversation;
D. Identifies opportunities where in-person engagement is needed with states, beyond virtual communication; and
E. Includes field visits to western states and tribes to better understand regional and local issues, the various relationships among states and tribes, and how federal rulemaking can address or impact those issues.

*Adopted unanimously by the Western States Water Council on October 22, 2026, in Las Cruces, New Mexico.*

Position No. 535

**RESOLUTION**
**of the**
**WESTERN STATES WATER COUNCIL**
**urging the**
**ADMINISTRATION AND CONGRESS**
**TO SUPPORT WATER RESEARCH AND DEVELOPMENT PROGRAMS**
**at the**
**DEPARTMENT OF ENERGY NATIONAL LABORATORIES**

**Snowbird, Utah**
**June 12, 2025**

**WHEREAS,** the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

**WHEREAS,** 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; and

**WHEREAS**, the WSWC has long recognized that water and energy resources are interdependent – using one requires the other – and this presents a particular challenge in the West, where energy demand continues to rise while water supplies are increasingly stressed; and

**WHEREAS**, integrating, protecting, and wisely managing our national water and energy resources for the benefit of our present and future generations, is increasingly important; and

**WHEREAS**, one purpose of the WSWC is to accomplish effective cooperation among western states (and our federal partners) in the conservation, development and management of water resources; and

**WHEREAS,** a second purpose of the WSWC is to maintain vital state prerogatives, while identifying ways to accommodate legitimate federal interests; and

**WHEREAS** many watersheds are already fully-appropriated, and new stresses are emerging from climate, population growth, land use changes and water needs for energy development and production; and

**WHEREAS**, there is growing concern, particularly in the Arid West, over our ability to continue to supply water of adequate quality in quantities needed to sustain current and future uses, including energy, as well as agricultural, municipal and environmental uses; and

**WHEREAS**, the failure to provide for such needs would have significant regional and national consequences; and

**WHEREAS**, the Presidential Memo on the Recission of Useless Water Pressure Standards issued on May 9, 2025 directs the Secretary of Energy to rescind regulations relating

to energy efficiency and water conservation requirements for household water use, including the potential elimination of the Energy Star program; and

**WHEREAS**, more than 1,000 hyperscale (>10,000 sq. ft.) data centers have been built in the U.S. to accommodate the recent expansion of artificial intelligence, with an additional 120-130 new centers expected each year, each presenting a significant demand on water resources; and

**WHEREAS**, there is growing interest in renewable geothermal energy, and hydrothermal resources are primarily found in arid western states; and

**WHEREAS**, present water and energy resources planning and sound future decision-making depends on our ability to understand, monitor, anticipate and adapt to changing conditions; and

**WHEREAS**, electricity generation and other energy development is a significant driver of present and future water demands and the expertise and research of the national labs can supplement and enhance the ability of state, local and tribal water managers to understand and develop adaptation strategies; and

**WHEREAS**, water-related research at the Department of Energy's Office of Energy Efficiency and Renewable Energy, Office of and National Laboratories has included:

- exploring the energy-water nexus;
- highlighting energy-water-carbon nexus challenges and opportunities;
- developing unique multisector and multiscale model frameworks to address critical planning and operational decisions at the energy-water-land nexus;
- evaluating synergies between energy and water infrastructure to improve reliability and resiliency;
- understanding interactions among atmospheric particles, clouds, the land surface, and human activities;
- providing decision science, support and informatics for balancing water supply and demands;
- developing domestic water use projections;
- decreasing water and energy demands through efficient use;
- promoting sustainable groundwater management and storage opportunities while reducing cost and energy demands and insuring water quality;
- advancing next-generation hydropower and pumped storage systems;
- modernizing irrigation;
- increasing the safety, security, and sustainability of water infrastructure through the development of advanced technologies that create new water supplies;
- improving desalination membranes;
- managing water in a low-to-no snow future; and
- conducting research and development in hydrogen production, delivery, and storage for multiple end uses.

**WHEREAS,** such research should be guided by state needs as expressed in state water and energy planning documents and through state planning processes with a focus on water resource demands and water quality impacts; and

**WHEREAS**, in the West, States in compliance with State law have exclusive authority over the appropriation and adjudication of water rights for all uses, and the allocation of water for energy development, including the determination of whether or not there is any unappropriated water available for use.

**NOW, THEREFORE, BE IT RESOLVED**, that the WSWC urges the Administration and the Congress to recognize the value of and funding for the Department of Energy hosted energy-water programs and research conducted at National Laboratories undertaken in collaboration with state water resources agencies, including but not limited to work at: the Idaho National Laboratory (INL); Lawrence Berkeley and Lawrence Livermore National Laboratories in California; Los Alamos and Sandia National Laboratories in New Mexico; the National Renewable Energy Laboratory (NREL) in Colorado; and Pacific Northwest National Laboratory (PNNL) in Washington, that collaboratively links federal energy research programs and water issues of concern to the western states.

**BE IT FURTHER RESOLVED**, that the WSWC urges the Administration and the Congress to encourage collaboration and cooperation between the National Laboratories and other federal agencies, including but not limited to the National Oceanic and Atmospheric Administration (NOAA), U.S. Bureau of Reclamation (USBR) and U.S. Geological Survey (USGS) to leverage federal expertise and resources (including supercomputing power; climate and precipitation site sensitivity analysis; systems analysis, integration, and security, etc.) in addressing the Nation's water-related challenges.

**BE IT FURTHER RESOLVED**, that the WSWC urges the Administration and the Congress to recognize the primary role of the States in allocating water for energy.

(*See also Positions No. 485, 8/5/22; No. 437, 7/18/19; No. 395, 7/15/16; No. 355, 6/26/13; and No. 324, 7/23/10*)

Position No. 531

**RESOLUTION**
**of the**
**WESTERN STATES WATER COUNCIL**
**regarding**
**CLEAN WATER ACT JURISDICTION**

**Lincoln, Nebraska**
**April 25, 2025**

**WHEREAS**, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

**WHEREAS,** 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; and

**WHEREAS**, the Clean Water Act (CWA) is built upon the principle of cooperative federalism in which Congress intended the states, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (Corps) to implement the CWA as partners, delegating co-regulator authority to the states;

**WHEREAS**, the CWA's cooperative federalism framework has resulted in significant water quality improvements since the law's enactment in 1972, and western states have made great strides in protecting water quality and coordinating water quality and water quantity decisions; and

**WHEREAS**, it is imperative that EPA and the Corps actively seek meaningful state consultation, engagement, and participation in the review and development of any new proposed or final rule to define Waters of the United States; and

**WHEREAS**, States are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks; and

**WHEREAS**, States have both state statutory and constitutional authority pursuant to their "waters of the state" jurisdiction to protect the quality of waters within their borders, and such jurisdiction generally extends beyond the limits of federal jurisdiction under the CWA; and

**WHEREAS**, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;" and

**WHEREAS**, CWA Section 101(g) further provides that the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act;" and

**WHEREAS**, the Supreme Court has interpreted the jurisdictional scope of the CWA in *U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985); *Solid Waste Agency of Northern Cook County (SWANCC) v. Corps*, 531 U.S. 159 (2001); and *Rapanos v. United States*, 547 U.S. 715 (2006); and *Sackett v. EPA* (#21-424, 143 S. Ct. 1322 (2023)); and

**WHEREAS,** the U.S. Supreme Court held in *Sackett* that the definition of "waters of the United States" in CWA §1362(7) "encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes" and that this does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are "waters of the United States" in their own right, so that they are indistinguishable from those waters; and

**WHEREAS,** *Sackett* also acknowledged that "temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells" and that "a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier's removal because it violates the Act…that unlawful barrier poses no bar to its jurisdiction;" and

**WHEREAS**, a one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West, where water and precipitation can be scarce and a variety of unique waterbodies exist, including small ephemeral washes and arroyos, snow dependent intermittent streams, effluent dependent and dominated streams, prairie potholes, playa lakes, and terminal lakes, as well as numerous man-made reservoirs, impoundments, and water and stormwater conveyance structures; and

**WHEREAS**, physical, biological, and chemical differences between waters, and hydrologic differences, both spatially and temporally, as well as considerable differences in legal doctrines that govern water in western states, mean that any federal effort to clarify CWA jurisdiction will inevitably impact each state differently, thus underscoring the need to thoroughly involve states in developing and implementing any rule so as to clearly respect and avoid conflict with state authority over the regulation of water quality and the allocation of waters and water rights within their respective borders; and

**WHEREAS**, any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact states and alter the distribution of power and responsibilities among the states and the federal government; and

**WHEREAS**, as co-regulators, states are separate and apart from the general public, and have a unique role with the federal government in the development and implementation of any rule to clarify or redefine CWA jurisdiction; and

**WHEREAS**, information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states; and

**WHEREAS**, uncertainty and differences of opinion have and continue to exist regarding CWA jurisdiction among states, and challenge EPA and the Corps to develop and implement any new rule in cooperation with the states, based on principles of cooperative federalism, and together to provide greater certainty and a clearer definition of the limits of federal jurisdiction; and

**WHEREAS**, substantial and recurring changes to regulatory definitions, policies, and programs between federal administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.

**NOW, THEREFORE, BE IT RESOLVED,** that Congress and the Administration should ensure that any federal effort to clarify or define CWA jurisdiction and define Waters of the United States:

1. Creates enduring and broadly supported definitions

2. Acknowledges and addresses the needs, priorities, and concerns of states as co-regulators.

3. Includes robust, meaningful, and representative state participation and consultation in the development and implementation of any rule, acknowledging the inherent federalism implications.

4. Gives full force and effect to Congress' intent to maintain a reasonable balance of state and federal authority and the purposes of CWA Sections 101(b) and 101(g).

5. Complies with the limits set by Congress as interpreted by the Supreme Court, and appropriately incorporates those limits.

6. Specifically identifies waters and features outside the scope of the CWA jurisdiction including but not limited to groundwater and historically recognized agricultural and silvicultural exemptions. Additionally, for states with (or seeking) CWA Section 404 delegated authority, provides states with the opportunity to establish processes for defining jurisdictional determinations based on scientifically defensible practices and those limits set by Congress as interpreted by the Supreme Court.

7. Acknowledges that states have authority to protect all "waters of the state," and that excluding waters from federal jurisdiction does not always mean that they will be exempt from state regulation and protection.

8. Continues to provide access to appropriate technical and financial assistance to the states to protect and improve water quality under existing EPA programs without regard to jurisdictional determinations.

9. Provides a clearly delineated process for resolving differences of opinion over federal and non-federal jurisdiction, and jurisdiction between different States and tribes (treated as states).

10. Provides for mapping of jurisdictional waters as a joint federal/state/tribal effort employing the best available data and tools, with appropriate provisions and processes for map maintenance, and recognizing that verification of jurisdiction still needs to be coordinated with the state.

11. Includes an appropriate delay in the effective date of any new rule or otherwise allows for a transition enabling states to take such actions as may be necessary to address any gaps in state law, regulation and protection, and to ensure sufficient time for tools to be developed by federal agencies, in collaboration with states, that facilitate implementation of the new rule.

12. Recognizes the need to balance definitional clarity with flexibility in implementation to address the unique landscapes, flow regimes, and legal frameworks in various regions of the Nation and appropriately weighs all factors of science, law, and effective policy to draw jurisdictional conclusions that are appropriate, and that do not impinge on the rights of States.

13. Considers a regional approach to the definitions of terms for foundational and any categorical waters in the rule including terms such as “relatively permanent” and “significant nexus” and defines regions building upon existing classification systems based on hydrology, geology, and climate.

14. Provides, in the rule development process, a representative number of states, as co-regulators, with diverse perspectives and regions to engage actively in an integrated way with the EPA and Corps staff to provide direct and effective feedback on the implementability of a proposed rule which requires ample time for development of new regulatory language.

Revised and Readopted
(*see former Positions No. 481 – 4/06/22;No. 472 – 9/16/2021; No. 427 –10/26/2018; No. 410 – 6/29/2017; and No. 369 – 7/18/2014)*

Position No. 529

**POSITION STATEMENT**
**of the**
**WESTERN STATES WATER COUNCIL**
**in support of**
**RENEWABLE HYDROPOWER DEVELOPMENT**

**Lincoln, Nebraska**
**April 25, 2025**

**WHEREAS**, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

**WHEREAS,** 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; and

**WHEREAS**, the water and hydropower resources of the West have been developed through partnerships between energy and water users, and continue to be inextricably connected; and

**WHEREAS**, clean, efficient, inexpensive hydropower is a vital part of the energy resources needed to meet our present and future energy demands; and

**WHEREAS**, hydropower is an important source of renewable electricity in the United States, representing about 27% of total renewable electricity generation, with approximately 103.4 gigawatts (GW) of capacity and nearly 5.7% of total electricity generation[1]; and

**WHEREAS**, the potential exists for further public and private development of this valuable resource, including upgrading existing generators, developing small hydro and the power potential from low-head hydro on existing man-made conduits and canals, development of tidal energy power systems, as well as hydroelectric pumped storage projects; and

**WHEREAS**, other than those projects requiring review by the Federal Energy Regulatory Commission (FERC), such development can often be undertaken with little impact on the environmental and important ecological resources, requiring minimal further environmental review; and

**WHEREAS**, permitting requirements may be appropriately minimized and streamlined so as to promote reasonable development while avoiding unnecessary costs; and

**WHEREAS**, the future development of potential hydropower resources should be appropriately undertaken in compliance with substantive and procedural state water law and interstate compacts, and consistent with the States' authority under Clean Water Act Section 401; and

**WHEREAS**, the rights and preference privileges of existing water and power users should be respected; and

**WHEREAS**, federal legislation has from time to time been introduced to further authorize and promote the wise and sustainable development of our renewable hydropower resources, also creating jobs, providing economic relief to power users, and reducing carbon emissions; and

[1] https://www.energy.gov/sites/prod/files/2016/10/f33/Hydropower-Vision-Chapter-2-10212016.pdf; p. 3, 76.

**WHEREAS**, hydropower is a prominent component of electricity generation in a number of western states, and important part of state renewable portfolio standards; and

**WHEREAS**, the potential exists to increase hydropower production by as much as 189 GW[2] by rehabilitating, expanding and upgrading existing facilities, powering non-powered dams, installing hydropower at existing conduits and canals, development of tidal energy power systems, as well as developing new project sites.

**NOW, THEREFORE, BE IT RESOLVED,** that the Western States Water Council supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs that enhance our electric generation capacity and promote economic development, through efficient permitting processes, while appropriately protecting environmental resources and respecting States' 401 certification authority under the Clean Water Act and States' authority over water allocation within their borders.

**BE IT FURTHER RESOLVED** that the Western States Water Council also supports the development and implementation of appropriate energy and water conservation programs at all levels to minimize demands placed on our natural resources and ecosystems.

**BE IT FURTHER RESOLVED** that past, present and future hydropower development and operational changes should recognize and ensure consistency with state law and regulatory authority and delegated authority under federal law.

Revised and Readopted
*(see former Positions No. 479, 4/06/22; 433, 3/22/2019, No. 391, 3/22/2016 and No. 351, 4/5/2013)*

[2] Ibid, pg. 95.

Position No. 527

**RESOLUTION**
**of the**
**WESTERN STATES WATER COUNCIL**
**regarding**
**THE EXTENSION OF NPDES PERMIT TERMS**
**Lincoln, Nebraska**
**April 25, 2025**

**WHEREAS**, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

**WHEREAS,** 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; and

**WHEREAS**, the federal Clean Water Act (CWA) created the National Pollutant Discharge Elimination System (NPDES) in 1972, addressing water pollution by regulating point sources that discharge pollutants to waters of the United States; and

**WHEREAS**, the CWA 33 U.S.C. 1342(b)(1)(B) indicates NPDES permits "are for fixed terms not exceeding five years"; and

**WHEREAS**, most states are now authorized to implement all or part of the CWA NPDES program; and

**WHEREAS**, the task of implementing the NPDES program has increased in scope and complexity since 1972, including: the number and type of sources needing permits, the scope of projects under consideration, and the environmental and social considerations to be included in permit writing; and

**WHEREAS,** for States with approved CWA programs, the role of the Environmental Protection Agency (EPA) is one of oversight and not implementation of core program activities; and

**WHEREAS**, understanding of water quality issues is constantly evolving, and the resulting increased demands on state-level administrative processes require increased capacity, innovation, efficiency, flexibility, and long-term planning; and

**WHEREAS,** water quality infrastructure investments often involve projects that extend beyond five years; and

**WHEREAS**, extending the upper limit of NPDES permit terms to 10 years would provide States discretionary authority to set an appropriate length during the permit writing process, allowing States to maximize the use of limited resources, better plan and invest in new technologies, facilities, and watershed-based approaches; and

**WHEREAS**, EPA tracks permit backlogs and encourages authorized permit programs to work to "increase efficiencies in the permitting process to decrease the NPDES permit backlog" to provide greater certainty to the business community; and

**WHEREAS**, States striving to reduce permit backlogs are faced with challenges including a widening universe of permit-seeking facilities, stagnant or declining funding, increasing federal guidelines, issues with staffing and retention, and increasing permit complexity; and

**WHEREAS**, States have demonstrated the ability and authority to implement other controls using 10-year permit terms including Resource Conservation and Recovery Act (RCRA), solid waste disposal (42 U.S.C. §6925 (c)(3)), and state water pollution control permit programs for animal feeding operations where 5-year NPDES permits are not required; and

**WHEREAS**, permits contain clauses to reopen, amend and/or modify permits following proper administrative procedures to update the appropriate requirements (40 CFR 122.62 and 124.5), allowing permitting authorities to respond to changes in standards, technologies and water quality needs, as well as public concern prior to permit expiration; and

**NOW, THEREFORE, BE IT RESOLVED**, the Western States Water Council supports amending the federal Clean Water Act 33 U.S.C. 1342(b)(1)(B) to indicate NPDES permits "are for fixed terms not exceeding 10 years," provided existing authority to reopen permit terms based on current law is retained.

**BE IT FURTHER RESOLVED**, the Western States Water Council encourages Congress and the Administration to provide adequate funding consistent with federal statutory authorities and regulatory mandates, at levels needed for states to fully implement federal environmental programs.

**RESOLUTION**
**of the**
**WESTERN STATES WATER COUNCIL**
**regarding**
**ABANDONED HARDROCK MINE CLEANUP**

**Lawrence, Kansas**
**October 23, 2024**

**WHEREAS,** the General Mining Act of 1872 allowed individuals to obtain exclusive rights to valuable hardrock mineral deposits on land belonging to the United States without requirements to reclaim the land until the 1970s; and

**WHEREAS**, hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper; and

**WHEREAS**, as part of this past, the West contains historically mined and abandoned hardrock mines on public and private land, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the needed cleanup and reclamation; and

**WHEREAS**, a recent report from the Government Accountability Office (GAO-20-238) found that the United States has at least 140,000 abandoned hardrock mine features on federal land of which 22,500 pose or may pose environmental hazards, including adverse effects to water quality; and

**WHEREAS,** most of these sites are in many western states with a significant portion located wholly or partially on public land managed by the U.S. Forest Service or the U.S. Bureau of Land Management; and

**WHEREAS**, significant hardrock mining has also occurred on tribal lands; and

**WHEREAS**, there could be more than 390,000 additional abandoned hardrock mine features on federal land that have not yet been characterized; and

**WHEREAS**, many of the abandoned hardrock mines are co-located on public and private land; therefore, consideration should be given to the private land component as well when assessing full mine site cleanup; and

**WHEREAS**, many states have agencies that administer the Clean Water Act (CWA), regulate and require financial assurance for reclamation of hardrock mines, remediate impacted waters, and implement abandoned mine programs that are used to identify state-specific priorities with respect to abandoned hardrock mining issues; and

**WHEREAS,** there are numerous economic, environmental, and social benefits from remediating and reclaiming lands and waters impaired by abandoned hardrock mines; and

**WHEREAS,** water quality impacts can be severe, with water quality conditions resulting in impacts to drinking water supplies, aquatic life, recreational uses, agriculture and livestock; and

**WHEREAS,** the U.S. Environmental Protection Agency (EPA) has identified developing alternative industrial development projects that are bonded for future cleanup on abandoned hardrock mine sites as an innovative solution to generate benefits and return abandoned mine lands to productivity while considering economic, environmental and social effects; and

**WHEREAS,** establishing a productive post-mining land use is an important safety and quality of life issue for states, especially where abandoned hardrock mine sites exist with encroaching development, have an increased prevalence of outdoor recreation opportunities such as off highway vehicle usage, or where the sites can meet the growing demand for renewable energy development and storage; and

**WHEREAS**, the cleanup of abandoned hardrock mines is hampered by two issues – (1) insufficient state and federal resources and (2) concerns about liability, compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site; and

**WHEREAS,** Bureau of Land Management officials estimated that with the agency's current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database (GAO-20-238); and

**WHEREAS,** states, tribes, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility for the sites (referred to as Good Samaritans in this resolution) have engaged in or are interested in voluntary restoration work at abandoned hardrock mines; and

**WHEREAS,** Good Samaritans currently have potential liability for their voluntary cleanup under the CWA, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) despite the fact that they did not previously operate or own the mine. Such Good Samaritans have expressed interest in voluntarily bearing the costs of the cleanup, and they could provide numerous benefits if they were able to remediate the abandoned mine, but are dissuaded by liability concerns; and

**WHEREAS,** liability concerns also prevent other active modern mining companies from re-mining or voluntarily cleaning up abandoned mines; and

**WHEREAS**, "Good Samaritan" bills have been introduced in Congress over the years to protect non-liable entities that are willing to voluntarily clean up these sites from legal liability under CERCLA and CWA; and

**WHEREAS**, in 2020 the EPA created a new office, the Office of Mountains, Deserts, and Plains, to promote Good Samaritan cleanup efforts and foster partnerships with states, tribes, local communities and other stakeholders to ensure more efficient cleanup of both Superfund and non-Superfund sites in the West, including abandoned mines; and

**WHEREAS,** in many western states, abandoned hardrock mine cleanup projects on public and private lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs if sufficient funding were available, and allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

**NOW, THEREFORE, BE IT RESOLVED,** that the Western States Water Council (WSWC) supports increased federal funding and workforce resources dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs, with a priority on those sites that are contributing to CWA 303(d) impaired waters or have been otherwise prioritized by states.

**BE IT FURTHER RESOLVED,** that increased federal funding appropriated by Congress should not be used to offset or otherwise reduce existing resources allocated to states to work on abandoned hardrock mine issues and should be delivered to state and federal agencies through a clear, transparent, and efficient manner that maximizes project implementation work at sites prioritized by states.

**BE IT FURTHER RESOLVED** that the WSWC supports a rapid and extensive inventory and characterization of environmental hazards and impacts, including water quality, caused by abandoned hardrock mines on federal, state, tribal, and private land across western states and working collaboratively with states and tribes, relying on their expertise to prioritize sites for cleanup.

**BE IT FURTHER RESOLVED** that the WSWC supports efforts by the EPA Office of Mountains, Deserts, and Plains to advance and resolve states' priority abandoned mine issues by helping states to leverage federal programs and enhance collaboration across federal agencies, states, regional, local, non-profit, and private partnerships to create an "all-hands" approach to finding creative solutions, including mining actions identified in EO 14017, for the cleanup of abandoned hardrock mine sites and to accelerate remedial efforts using the most advanced technology solutions.

**BE IT FURTHER RESOLVED** that the WSWC supports exploration of new ideas for moving projects forward, such as using Brownfields' Bona Fide Prospective Purchaser protections or other methods of promoting liability protections until such time that a Good Samaritan program can be established.

**BE IT FURTHER RESOLVED** that the WSWC supports legislation to amend the Clean Water Act to protect Good Samaritans and States from inheriting perpetual liability for the site and to include flexibility and mechanisms for States to implement creative approaches to remediation (e.g., use of Supplemental Environmental Projects obtained through settlements).

**BE IT FURTHER RESOLVED,** the WSWC supports legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.

**BE IT FURTHER RESOLVED,** the WSWC calls on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA, CWA and RCRA liabilities for Good Samaritans, while the federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental entities, and the mining industry) from improving conditions at abandoned mines.

See Position No. 477, September 16, 2021

Position No. 521

**RESOLUTION**
**of the**
**WESTERN STATES WATER COUNCIL**
**in support of**
**STATE CWA SECTION 401 CERTIFICATION AUTHORITY**

**Lawrence, Kansas**
**October 23, 2024**

**WHEREAS**, States have responsibly exercised their delegated authority under the Clean Water Act (CWA) Section 401 and under state water quality statutes to protect water quality, and must consider proposed activities and discharges in light of the states' designated water uses and related water quality standards; and

**WHEREAS**, the Council supports a balanced and integrated approach to achieve water and energy policy goals that plans for the future in sustainable ways, and recognizes legitimate state water and water quality management, protection and planning authorities to balance competing water uses; and

**WHEREAS**, the western states strongly support the planning and development of critical infrastructure and streamlined permitting processes, but such efforts should not come at the expense of states' authority to allocate, manage, and protect their water resources; and

**WHEREAS**, the development of hydropower and other federally permitted and licensed projects involving activities that may impact states' water quality standards should be appropriately undertaken in compliance with substantive and procedural state water law and delegated authority under CWA Section 401; and

**WHEREAS**, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;" and

**WHEREAS**, CWA Section 101(g) further provides that the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act"; and

**WHEREAS**, Section 27 of the Federal Power Act declares: "That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein;" and

**WHEREAS**, the Supreme Court has narrowly interpreted the Federal Power Act (16 U.S.C. 791a et seq.) reading Section 27 (16 U.S.C. 821) to limit state authority to set streamflow requirements on federally permitted and licensed projects, holding in *First Iowa Hydro-Electric Cooperative v. Federal Power Commission*, 328 U.S. 152 (1946) and in *California v. FERC*, 495 U.S. 490 (1990) that federal requirements preempted any state requirements, including efforts to establish minimum stream flows, noting that "…Congress remains free to alter what we have done;" and

**WHEREAS**, these rulings eroded state authority over state resources, and the Council has supported federal legislation to restore states' primary authority for regulating streamflows and water use and clarifying Congressional intent under the Federal Power Act; and

**WHEREAS**, in *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Supreme Court upheld a state's delegated authority to impose minimum stream flow conditions under

the CWA Section 401 certification process where necessary to protect a designated use for fish habitat, expressly rejecting any implied limitations on Section 401 certifications based on the *First Iowa* interpretation of the Federal Power Act; and

**WHEREAS**, an overly narrow reading of Section 401 would deprive the states of the ability to maintain the very beneficial uses that the Clean Water Act was designed to protect, and threaten the existing partnership between states and federal agencies based on cooperative federalism; and

**WHEREAS**, the vast majority of Section 401 certification requests are processed within 90 days, well within the one year allowed by current law, with relatively little if any backlog of certification actions; and

**WHEREAS**, most delays are typically due to submission of an incomplete application, applicants' non-responsiveness to requests for additional information, the completion of necessary study requirements, the size and complexity of some projects (and related impacts), substantive changes to the proposed project requiring further review, or constraints on state resources; and

**WHEREAS**, CWA Section 401 certification denials by states are rare and carefully considered, and are not examples of the failure of the system, as the process has been historically well-understood, reliable and supported by case law that provides certainty for both the states, federal agencies, and the regulated community; and

**WHEREAS,** actions taken by the federal government under the 2020 CWA Section 401 Certification Rule (85 FR 42210) caused some western states to issue an increased number of denials, due to inflexible deadlines that did not accommodate state public engagement laws or allow sufficient time to gather adequate information on project impacts; and

**WHEREAS,** the 2020 rule revision led to federal agencies waiving reopener conditions in nationwide permits imposed on federal projects by states under CWA Section 401, inconsistent with CWA Sections 101(b) and 101(g), Section 27 of the Federal Power Act, and the Supreme Court ruling under *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology;* and

**WHEREAS**, EPA published a new 2023 CWA Section 401 Water Quality Certification Improvement Rule (88 FR 66558); and

**WHEREAS**, the 2023 CWA Section 401 Water Quality Certification Improvement Rule identified 16 national parks that EPA determined to be "lands of exclusive federal jurisdiction" and asserted that EPA is the Section 401 certifying authority in those parks, although states have been the certifying authority in some of those parks for decades; and

**WHEREAS**, substantial and recurring changes to regulatory definitions, policies, and programs between federal Administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.

**NOW, THEREFORE, BE IT RESOLVED** that the Western States Water Council supports any changes that strengthen the deference to state water laws and do not diminish the primary state authority and responsibility for the appropriation, allocation, development, conservation, and protection of their water resources, including minimum streamflows, and the protection of water quality and designated uses.

**BE IT FURTHER RESOLVED** that the Western States Water Council strongly supports early state engagement in federal permitting and licensing actions and the coordination of state and federal environmental requirements and review processes for critical infrastructure without diminishing state authority.

**BE IT FURTHER RESOLVED** that the Western States Water Council supports a mechanism in any rule development process for a representative number of states, as co-regulators with diverse perspectives and regions, to engage actively with EPA staff to provide direct and effective feedback on the implementability of a proposed rule.

**BE IT FURTHER RESOLVED** that the Western States Water Council encourages EPA to consult with affected states regarding EPA's certifying authority in national parks designated as "lands of exclusive federal jurisdiction" in order to resolve any jurisdictional disputes in a manner that upholds the CWA's direct grant of Section 401 certifying authority to states and its intent to empower states to protect water quality within their boundaries.

Revised and Readopted
(See Position No. 471, September 16, 2021 and No. 426, October 26, 2018)

Position No. 517

**RESOLUTION**
**of the**
**WESTERN STATES WATER COUNCIL**
**Regarding**
**STATE NUTRIENT REDUCTION STRATEGIES**
**West Fargo, North Dakota**
**July 26, 2024**

**WHEREAS**, the Clean Water Act (CWA) establishes individual States as co-regulators, responsible for establishing comprehensive water quality standards and nutrient reduction strategies for waters within their borders; and

**WHEREAS**, the west includes diverse and unique physiographic, hydrologic, geologic and climatic conditions, and water supply infrastructure, with significant implications for nutrient management; and

**WHEREAS**, States are primarily responsible and accountable for their own water development, management, and protection challenges, and are in the best position to identify, evaluate, and prioritize their needs, and plan and implement strategies to meet those needs; and

**WHEREAS**, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" and "to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution;" and

**WHEREAS**, Congress established a national policy in CWA Section 101(a)(7) supporting the development and implementation of programs for the control of nonpoint sources of pollution "in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution;" and

**WHEREAS**, most States have authority over the regulation of discharges of pollutants, including excess nutrients, for waters within their borders, and are primarily responsible for managing and otherwise controlling such discharges; and

**WHEREAS**, nitrogen and phosphorus pollutants are the cause of water quality impairment to thousands of water bodies in the U.S., resulting in hypoxia, harmful algal blooms, and groundwater nitrate contamination, and thereby threatening the availability of water for designated uses including domestic supply, recreation, aquatic wildlife habitat, and agricultural use; and

**WHEREAS**, nutrient issues are typically the result of excess availability, manifesting as drinking water compliance problems and impacts to desirable aquatic life; and

**WHEREAS**, most States have unique reduction strategies based on narrative criteria, which express and address the impact of excess nutrients, and result in demonstrable positive environmental

responses that decrease the frequency, size, and severity of low dissolved oxygen occurrences and other water quality issues, including those caused by harmful algal blooms; and

**WHEREAS**, the Environmental Protection Agency (EPA) has promoted the position that numeric nutrient criteria are necessary to provide measurable water quality-based goals and are easier and more efficient than the narrative criteria statements in many state water quality standards; and

**WHEREAS,** nutrient reduction requires a combination of natural and social sciences to create and implement standards which are achievable, economically feasible and sociologically appropriate, and support desired outcomes for designated uses; and

**WHEREAS**, EPA provides information, methods, tools, evaluation techniques, and best practices to address problems associated with excess nutrients; and

**WHEREAS**, EPA seeks to support the efforts of states and tribes to reduce nutrient loading by facilitating water quality modeling and monitoring; and

**WHEREAS,** baseflow conditions can be predominantly influenced by wastewater from NPDES permitted facilities, and technology-based controls for point sources may be more physically and fiscally achievable than achieving water quality based effluent limitations; and

**WHEREAS,** reductions of wet weather nutrient loading require control efforts among both point and non-point sources in both urban and rural landscapes, and states have different approaches to controlling nonpoint sources, which are widespread, challenging to control and maintain, and largely subject to only voluntary authority under the Clean Water Act; and

**WHEREAS**, Congress has authorized funding for programs that are crucial to nutrient reduction such as Clean Water State Revolving Funds (Clean Water SRFs), Section 106 Grants for water pollution control programs, Section 319 Grants for nonpoint management programs, and National Resources Conservation Service (NRCS) programs such as the Environmental Quality Incentives Program (EQIP).

**NOW, THEREFORE, BE IT RESOLVED**, that any EPA nutrient reduction strategy must recognize and respect state primacy, reflect a true state-federal partnership, and provide adequate funding consistent with current federal statutory authorities and regulatory mandates.

**BE IT FURTHER RESOLVED,** the Western States Water Council (WSWC) supports the ability of each State to choose how it leverages the portfolio of reduction strategies in determining nutrient reduction regulations, including narrative criteria, technology-based criteria, market-based efforts, state regulated alterations to the landscape, as well as long recognized strategies such as numeric criteria, TMDLs, facility optimization, and NPDES permitting.

**BE IT FURTHER RESOLVED,** the WSWC supports the ability of each State to implement reduction strategies that focus on state-selected priorities, appropriate documentation and public outreach, and achievable improvement goals and that consider the severity of impairments, the impacts to drinking water, the need to protect unimpaired waterbodies, the implementation challenges and impacts to downstream waters as understood through both natural and social sciences.

**BE IT FURTHER RESOLVED,** that effective nutrient reduction requires engagement and coordination among all levels of government, each fulfilling their role in scientific investigation, technical and financial assistance, strategic prioritization, tactical regulation, resource delivery, on-site implementation, and adaptive management.

**BE IT FURTHER RESOLVED**, that the WSWC encourages the EPA to work with its federal partners such as NRCS to form a coordinated federal response with state input to support customized state nutrient reduction strategies and the achievement of water quality standards.

**BE IT FURTHER RESOLVED**, the WSWC supports funding at levels needed for states to fully implement federal programs that facilitate the development and implementation of science-backed state-led nutrient reduction strategies, including Clean Water SRFs, Section 319 & 106 grants, and NRCS programs such as EQIP.

**BE IT FURTHER RESOLVED**, the WSWC supports the collection, analysis, and open sharing of reliable water quality data at all levels of government to support sound decision-making, including development of models, tools, and resources that are adaptable to unique hydrologic conditions.

Position No. 512

**POSITION**
**of the**
**WESTERN STATES WATER COUNCIL**
**regarding**
**INTEGRATING WATER AND ENERGY PLANNING AND POLICY**
**Washington, DC**
**March 14, 2024**

**WHEREAS**, the West enjoys diverse and abundant energy resources, including renewable and non-renewable resources, but water is scarce in much of the region and may or may not be sufficient for all proposed uses; and

**WHEREAS**, power plant cooling and other energy resource development and related water requirements can be significant on state, local and westwide scales; and

**WHEREAS**, the West is a leader in the planning, development, diversification, management and protection of the Nation's water and energy resources; and

**WHEREAS**, in the West, maintaining adequate and sustainable supplies of clean water and energy present interrelated challenges given a growing population, increasing water and energy demands, and an uncertain climate subject to multi-year drought and other extremes; and

**WHEREAS**, an integrated approach to water and energy resource planning, development, diversification, management and protection is necessary to achieve a thriving and sustainable future for the West; and

**WHEREAS**, effectively planning for the future requires gathering and integrating data and information on past, present and future water and energy supplies and demands, including embedded demands by different sectors/uses and users; and

**WHEREAS**, in general, current water use data (especially consumptive water use data) are not sufficient for detailed and comprehensive analyses to support many water/energy decisions and policymakers' needs; and

**WHEREAS**, the Western Governors' Association, Western States Water Council, Department of Energy, Sandia National Laboratories (and other DOE laboratories), Western Interstate Energy Board, Western Electric Coordinating Council, Electric Reliability Council of Texas and others have worked collaboratively to develop a better understanding of water and energy supplies and demands; and

**WHEREAS**, public-private partnerships are increasingly important in addressing our future water and energy challenges; and

**WHEREAS**, there is a continuing need for federal and state water and energy resource agencies, public utility commissions, and other planners, regulators and policymakers to better define and consider the nexus between water and energy resources in their respective areas of jurisdiction; and

**WHEREAS**, continuing water and energy nexus research and development is needed to further our understanding and evaluate the effectiveness of different policies and programs given various future scenarios; and

**WHEREAS**, the Regional Clean Hydrogen Hubs Program (H2Hubs) includes up to $7 billion to establish 6-10 regional clean hydrogen hubs to form the foundation of a national clean hydrogen network.

**NOW, THEREFORE, BE IT RESOLVED**, that western water and energy planners, policymakers, managers and regulators should consider the following:

(1) integrating water and energy policies and engaging water and energy planners to maximize program and project effectiveness and efficiencies;
(2) supporting new and continuing data gathering, analyses and research related to better understanding water and energy supplies and demands, and related science;
(3) promoting integrated water and energy conservation and use efficiency;
(4) seeking to minimize economic, environmental and other costs of providing adequate, reliable and sustainable supplies of water and energy;
(5) expanding public education, engagement and outreach to highlight the importance, vulnerability and interrelated nature of our water and energy resources;
(6) ensuring decisions related to the siting, construction and operation of water and energy development projects include an evaluation and appropriate consideration of the interrelated impacts of such development;
(7) tailoring the use of alternative cooling technologies and other energy-related options to the availability of water, and the related opportunity costs related to other water uses;
(8) seeking to develop a diversified portfolio of water and energy resources and assets to maximize reliability and flexibility;
(9) taking advantage of synergies and economies of scale related to integrating water and energy conservation, development and protection programs and projects;
(10) evaluating and integrating life-cycle costs related to water and energy supply development, conveyance and transmission;
(11) integrating short and long-range water and energy supply planning;
(12) promoting the development and use of “smart” technologies for management of water and energy demands and production;
(13) ensuring that the West maintains sustainable, reliable and robust infrastructure systems necessary to deliver adequate supplies of clean water and energy to meet present and future needs; and
(14) evaluating the water resources needed for hydrogen energy development.

Revised and Readopted
*(see former Position No. 463, March 25, 2021, and No. 420, March 14, 2018)*