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Home
Email
Top

COLORADO RIVER WATER USERS ASSOCIATION
2001 RESOLUTIONS

Resolution No. 2001-1

ENDANGERED SPECIES ACT

The purpose of the federal Endangered Species Act is to conserve the ecosystem upon which threatened and endangered species depend, and to conserve and recover listed species.

The Endangered Species Act shall:

Recognize and protect property rights and water rights;
Fairly treat property owners and water right holders;
Minimize social and economic impacts;
Use sound science in listing of species and designation of critical habitat; and,
Provide positive incentives to conserve listed and declining species, including statutory provision for:

- Assurances-"no surprises" for non-federal stakeholders affected by federal agency Section 7 consultations.
- Ecosystem based conservation plans conserving all species dependent upon the ecosystem.

Position Statement
Endangered Species Act
(Resolution 2001-1)

The federal Endangered Species Act shall be implemented, reformed and reauthorized subject to the following:

1. **Water:**

a) **No Federal Water Law**: The Act does not, and shall not create federal water law or federal rights in water.

The Act shall not be construed or used, to impair, abrogate, supersede or amend:

(1) vested water rights granted by the respective states for beneficial uses;

(2) rights of beneficiaries of such water rights established by confirmed contracts between the United States and the beneficial users of said water under said rights;

(3) the rights of Indian Tribes established by treaty, statute, settlement, decree or Executive Order; or

(4) water rights allocated by interstate compact or United States Supreme Court decree.

b) **State Law and Processes:** The federal government shall not acquire land or water, except on a willing seller/willing buyer basis, and in a manner consistent with state substantive and procedural law, in carrying out programs for the conservation of endangered and threatened species.

The federal government shall not acquire water, even on a voluntary basis, without full compliance with the laws of the Indian Reservation and state in which such waters are found.

c) **Water Use:**

(1) **Historical Uses:** Existing historical water uses and depletions, and hydro-power operations, shall be exempt from the Act.

(2) **Allocation:** The Act shall not be construed or used to reallocate water absent the consent of the owners or beneficiaries of such water.

(3) **Impairment:** The federal government shall not impair the right to receipt and/or delivery of water within a Reclamation Project under existing water storage, repayment or water service contracts duly executed and in existence or approved for execution for any purpose under the Act.

d) **Recovery Plan Water:** Where water is found to be necessary for the recovery of threatened and endangered species, the federal government shall acquire water rights on a voluntary basis and only with full compliance with the laws of the Indian Reservation and state on/in which such waters are found.

e) **Operation and Maintenance:** Operation, maintenance and repair of existing facilities shall be exempt from the Act.

2. **Species Protection:**

a) **Listing:**

(1) **State and Tribal Programs:** The federal government shall:

a) recognize and defer to state and tribal programs designed to conserve species and avoid the necessity of listing a species;

b) confer with state, local and tribal officials prior to a listing of species or designation of critical habitat; and,

c) support state or tribal recovery plans as an alternative to federal recovery plans.

(2) **Science:** Decisions regarding the listing, protection and recovery of endangered species and designation of critical habitat shall be based on adequate, verifiable, peer-reviewed, ground-truthed, scientific information, and shall be subject to public scrutiny.

The Act shall protect only those taxonomic groups which may be significantly different

from other groups within the species.

b) **Critical Habitat Designation:**

Designation of critical habitat shall be made at the recovery planning stage, when there is sufficient information available to decide what habitat is essential for conservation of the species. There shall be no critical habitat designation under ecosystem management. The critical habitat designation should be made based on sound science, and not on a predetermined schedule.

c) **Recovery Plans:**

The development of recovery plans and the recovery of threatened and endangered species, including the provision of adequate funding, is a federal obligation. After a species is listed, the federal government shall publish a recovery plan that identifies:

(1) the actions necessary for recovery;
(2) the costs of the actions necessary for recovery;
(3) the probability of recovery if actions are taken;
(4). quantified goals and a recovery date;
(5). the potential social and economic impacts of recovery;
(6). the costs and benefits of recovery and
(7) critical habitat essential for conservation and recovery of the species.

d) **Conservation Plans:**

(1) **Authorization:** In addition to providing authority for conservation plans and incidental take authority for listed species, the Act shall provide the necessary authority for conservation plans for species in advance of listing. Conservation plans shall provide for automatic incidental take permits upon subsequent listing if the plan has been adopted and followed. Permitted incidental "takes" in conservation plans provide incentive for conservation measures to be implemented in advance of listing and opportunities to avoid a species listing.

(2) **Voluntary Natural Systems Conservation Plans:** The Act shall provide the necessary authority for conservation plans that are focused on conservation of habitats or ecosystems rather than specifically on species. Such plans shall be voluntarily entered into in lieu of species-based conservation plans to achieve conservation on incidental take authorizations. Such plans shall provide for incidental take authorizations of listed and unlisted species that utilize the habitats or ecosystem conserved by the plan.

(3) **Cooperative Efforts Preference:** Cooperative actions to conserve species, including candidate species conservation agreements, shall be given preference in lieu of listing such species as threatened or endangered.

(4) **No Surprises**. No surprises assurances shall be provided for HCPs and for Section 7 consultations affecting non-federal parties.

e) **Artificial Propagation:** The Act shall clearly support recovering endangered species through artificial means and encourage the use of experimental non-essential populations to facilitate recovery efforts. In some instances, responsible artificial propagation and recruitment can be the only means to recover a species, especially where competition between native species and introduced species is a significant factor.

f) **Management Decisions:** Decisions regarding the listing of a species, designation of a critical habitat and approval of recovery plans shall be made by the Secretary, without delegation, after

(1) consultation with the appropriate agency, regional director, as well as the designee of the tribes, and the Governor of the state or states impacted by the decision;

(2) a hearing in the affected area upon receipt of a petition therefore by an interested party, if such a hearing is determined by the Secretary to be in the public interest; and

(3) the Secretary's independent review of the record with respect to the proposal.

Previously approved actions of the federal government that do not directly affect a species or its critical habitat, shall not be prohibited or affected by the Act.

g) **Cost-Benefit Analysis:**

(1) **Federal Obligation:** Critical habitat shall not be designated until a realistic, peer-reviewed analysis shows that the benefits outweigh the costs. It is the obligation of the federal government to provide the cost-benefit study and analysis.

The federal government shall insure that the public, and other governmental entities, are fully informed of the social and economic costs and benefits of implementing the Act. Activities such as species listing, critical habitat designation, development of reasonable and prudent alternatives, recovery plans and efforts to recover the species shall be open to public participation.

(2) **NEPA:** Actions under the Act, including the listing process, critical habitat designation, preparation of cost benefit analysis and biological opinions, and preparation of recovery plans, shall be taken only after compliance with the National Environmental Policy Act.

(3) **Economic and Social Impacts:** The Act shall be implemented in a manner which minimizes adverse social, cultural and economic impacts.

h) **Periodic Review:** The Act shall provide for periodic review of species listings, critical habitat designations and recovery plans to determine if such actions continue to be necessary for the continued existence of a species.

i) **Reconsideration:** When petitioned by an affected tribe, state legislature, or Governor, the federal government shall take immediate steps to review, document, reconsider and, where appropriate, rescind previous action in the administration of the Act. Such actions shall

include public hearings in each affected area.

j) **Section 7 Consultation:** Review of indirect effects of the proposed Federal action shall be limited to those effects which would not occur but for the proposed Federal action and are reasonably certain to occur.

3. **Property Rights:**

a) **No Involuntary Appropriation:** The Act shall not be used or construed to permit or justify the involuntary appropriation of property of others, including contractual rights in existence at the time of a listing of a species for any purpose, including but not limited to, a taking of a property right for purposes of mitigating federal action under the Act.

b) **Fair Compensation:** The federal government shall fairly and timely compensate property owners when the Act results in a taking of private property.

c) **Federal "Standing" for Litigation:** Individuals or entities whose property or economic interest may be adversely impacted by actions taken under the Act shall have standing as parties in any litigation under the Act and shall have "applicant" status in any action under the Act, including Section 7 consultations.

4. **Interrelation With Other Laws:** The Act shall be carried out in a manner consistent with other federal laws, authorities and purposes, including the trust responsibility of the United States. The Act shall not abrogate, supersede, supervene or supplant the United States Constitution, Bill of Rights, other federal law or state law regarding water or other property rights.

Resolution No. 2001-2

CLEAN WATER ACT (CWA)

The CWA shall not be utilized to regulate anything other than point and non-point sources of pollutants to waters of the United States.

States Rights:

1. The CWA shall not supersede, abrogate or impair state water rights.

2. No water rights arise in the United States or any other person by virtue of the CWA.

3. No federal agency or officer shall redefine, limit or prohibit those uses of water authorized by state law as beneficial.

4. No provision of the CWA shall prohibit or limit the development of water legally allotted to a state.

5. No provisions of the CWA shall restrict any state in the choice of its water law or the judicial or administrative principles for making water allocations.

6. States shall have primary responsibility for identifying and administering both voluntary and

involuntary Best Management Practices ("BMP") associated with the CWA. Federal funds and assistance should be made available for implementing BMPs.

7. States shall be allowed to develop and utilize water quality standards appropriate for ephemeral and/or effluent dominated streams taking into account the intermittent nature and other physical limitations of such streams, the net environmental benefit associated with the continued discharge of water to such streams, and the need to protect downstream beneficial users.

8. States shall have the prerogative of identification and implementation of any anti-degradation policy so long as existing beneficial uses are maintained and protected.

9. EPA shall defer to state classifications for intrastate bodies of water and the state established water quality standards for the protection of such classifications.

10. States shall determine whether manmade water conveyance systems are subject to CWA requirements, and if so, the appropriate criteria and classifications applicable to such systems.

11. States shall exercise primary authority in meeting the requirements of Section 303(d) of the CWA, with specific reference to (i) the identification of impaired water bodies; (ii) the prioritization of impaired water bodies; (iii) the establishment of TMDLs; (iv) the implementation of TMDLs; and (v) the selection of appropriate mechanisms for addressing non-point sources of pollutants. Water bodies shall not be listed where Section 303(d) impairment is determined to be caused by "pollution" as distinct from "pollutants".

12. EPA may suggest technical guidance upon flow, biological nutrient and wildlife criteria, but shall defer to the states in their adoption and implementation.

Section 404:

1. Deference shall be accorded to the local, state or tribal governmental unit, or other sponsoring individual or organization regarding the need for, timing, and the siting of a 404 regulated project.

2. In considering the project purpose and need for water development projects proposed by states, tribes or other local governmental subdivisions, the purpose and need should be defined by the project sponsor. The purpose and need as identified by the Federal agency shall incorporate the sponsor's purpose and need in its entirety.

3. The Environmental Protection Agency (EPA) authority under § 404 (c) of the Act shall be limited to identifying and directing unresolved concerns to the Secretary of the Army for a final decision.

4. The Corps of Engineers shall adopt simplified procedures for issuing general and nationwide permits and for transferring 404 permit authority to states. The scope of actions covered under general or nationwide permits shall not be narrowed from that existing on January 1, 1997.

5. Section 404 shall provide for a simplified and expeditious permit process to help facilitate recovery from Federally-Declared Disasters.

6. The EPA and U.S. Fish and Wildlife Service shall establish guidelines and objective measures for mitigation, and defer to the Corps of Engineers on matters of engineering, economics, flood control and other areas within the Corps' expertise.

7. The provisions of the February 7, 1990 Memorandum of Agreement on mitigation between the Corps and EPA on the Corps Wetlands Delineation manual shall be rescinded pending completion of a formal public rule making process.

8. All relevant agencies including EPA shall participate in the pre-application consultations and work constructively with applicants to resolve problems that arise during the permit process.

9. Section 404 shall provide for routine maintenance activities to be covered by the initial permit process and allow for automatic renewal so long as the activity remains substantially the same.

10. Section 404 shall provide for an exemption for construction of emergency water supply projects and any incidental fallback.

Non-Point Source:

1. The CWA shall encourage necessary, cost effective and reasonable voluntary measures to control non-point source discharges including the use of BMPs and pollutant trading.

2. EPA shall consult with the appropriate agencies within the Departments of the Interior and Agriculture and all affected state, tribal and local entities before identifying non-point source control measures.

3. Non-point source controls shall be integrated, to the extent determined appropriate by state and local entities, with watershed management programs designed to achieve overall progress towards water quality objectives in the area.

4. Non-point sources shall not be subject to Section 401 certification review requirements.

Federal Mandates:

1. The CWA shall allow for adequate phase in time for new limitations or standards so as not to impose unnecessary or substantial hardships on regulated entities or their constituents.

2. Any action required by the CWA shall be supported by adequate federal funding.

3. No action shall be taken under the CWA until a peer-reviewed benefit cost analysis demonstrates that the benefits of the proposed action are clearly greater than the costs.

4. No private property shall be taken under the CWA without just compensation to the owner as required by the Fifth and Fourteenth Amendments to the Constitution of the United States.

Resolution No. 2001-3

RECLAMATION

1. Reallocation of Project Purposes and Project Operation Changes.

Project benefits shall not be reallocated without the consent of project beneficiaries. Beneficiaries shall not pay for project benefits reallocated to another use. Project operations changes shall not impair existing contracts or water rights under state law.

2. Environmental Mitigation

The federal government shall pay for environmental enhancement and mitigation. Existing contracts shall not be surcharged for environmental enhancement or mitigation.

3. Water Conservation

"Conserved water" shall not be reallocated in violation or derogation of existing contracts or water rights.

4. Water Service Contract Renewal

Water service contracts shall be renewed for the same quantity and availability of supply as has been historically beneficially used. Water service contracts shall be renewed for the maximum allowable term.

5. Reclamation Reform Act

The RRA shall not affect exempted or paid-out districts or impair or alter existing contracts.

6. Reclamation Fund

The Reclamation Fund shall only be used for activities specifically set forth in reclamation law.

7. Reservoir and Dam Operation

All reservoirs and dams on the Colorado River shall be operated in compliance with applicable law and authorized project purposes. Operational changes to benefit recreation, fishery or environmental mandates shall minimally impact hydropower production. The federal government shall pay for replacement power due to operational changes for recreation, fishery or environment.

Resolution No. 2001-4

COLORADO RIVER SALINITY CONTROL

The Colorado River Water Users Association (CRWUA) urges the Congress and Administration to adequately fund and continue to implement, in a timely and cost-effective manner, the measures to control Colorado River salinity authorized in the 1974 Colorado River Basin Salinity Control Act (PL 93-320) as amended by PL 98-569, PL 104-20 and PL 104-127 in order to maintain, as required by federal law, the salinity criteria adopted by the seven Colorado River Basin States and approved by the U.S. Environmental Protection Agency. .

Position Statement
Colorado River Salinity Control
(Resolution 2001-4)

The Colorado River provides important water supplies for more than 27 million Americans in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Over 3 million acres are irrigated within the Basin and hundreds of thousands of additional acres are irrigated by waters exported from the Basin. The Colorado River also serves about 1.7 million people and half a million acres of irrigated farmlands in the Republic of Mexico.

The Colorado River Basin States and their water users have consistently worked with the executive, legislative and judicial branches of the federal government to assure a fair and effective allocation of the River's water supply within the terms of the law of the river. Preserving the Basin States' ability to develop their apportioned water supplies necessitates maintenance of the Basin-wide water quality standards for salinity. Without implementation of additional salinity control measures, Colorado River salinity is expected to increase to about 790 milligrams per liter (equivalent to parts per million) below Hoover Dam; to 810 milligrams per liter below Parker Dam; and to 928 milligrams per liter at Imperial Dam by the year 2015. At 1997 salinity levels, the economic damages from high salinity currently experienced by municipal, industrial and agricultural users of Colorado River water in the United States are estimated to be in excess of $500 million per year. Should the salinity levels increase to the numeric criteria levels specified in the water quality standards for salinity, these damages could exceed $1 billion per year by the year 2015.

The Colorado River Basin Salinity Control Act provides the means for the United States to meet the national water quality obligation to the Republic of Mexico established in 1972 by Minute 242 of the International Boundary and Water Commission and to maintain the Basin-wide water quality standards adopted by the seven Colorado River Basin States and approved by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Clean Water Act.

In 1974, Congress enacted the Colorado River Basin Salinity Control Act (PL 93-320) to implement a 1973 salinity agreement with Mexico as well as a program for controlling Colorado River salinity levels within the United States. Pursuant to that Act, numeric salinity criteria for the river and a plan for implementing salinity control measures to maintain that criteria were developed and adopted by the seven Colorado River States and approved by the EPA. In 1984, PL 93-320 was amended to provide additional salinity control activities including a new voluntary, cost-shared, on-farm salinity control program by the Department of Agriculture. In 1995, Congress enacted PL 104-20, which provides the Bureau of Reclamation with programmatic authority to initiate new federal and non-federal salinity control measures. In 1996, the USDA's program was combined with three other programs into the newly-created Environmental Quality Incentives Program by the Federal Agriculture Reform and Improvement Act (PL 104-127).

This national commitment requires that Congress appropriate sufficient funding for the Colorado River Basin Salinity Control Program to the Bureau of Reclamation in the Energy and Water Development appropriations process. The farmers participating in the Department of Agriculture component of the Program share in the costs of implementing the salinity control measures. In recognition of the Congressional inclusion of USDA's Colorado River Basin Salinity Control Program (CRSCP) in the Environmental Quality Incentives Program of PL 104-127, the Department of Agriculture should take all necessary steps to ensure that the salinity control proposals receive adequate funding under EQIP to assure full implementation of the plan adopted by the seven Colorado River Basin states and approved by the EPA.

It is critical that Congress and the Administration continue funding and implementation of the salinity control program by the Departments of the Interior and Agriculture in order to maintain the quality of

Colorado River water at or below the Basin-wide water quality standards' numeric criteria values.

Resolution No. 2001-5

COMPLIANCE WITH STATE LAW

The Federal Government shall comply with all applicable state laws and regulations regarding water. State law shall have the deference granted in the Constitution of the United States.

Position Statement
Compliance with State Law
(Resolution 2001-5)

The 10th Amendment to the Constitution of the United States reserves to the states or people powers not delegated to the United States by the Constitution or otherwise prohibited by the Constitution to the states. The states are directly responsible for many water management, planning and regulatory functions and are affected by federal policies and programs.

If there is to be responsible, effective policy and decision-making in water management, planning and regulation, the balance between the state governments and the federal government under the 10th Amendment must be preserved.

Greater deference shall be given to state and local determinations of the need for and the purposes served by water projects. The federal purpose and need, as established in the federal permitting process, should incorporate the water project sponsor's purpose and need. No federal policy, will or agenda shall frustrate or subvert local needs.

The balance between the federal and state governments, created by the 10th Amendment, has severely eroded over time. The negative impacts and damaging effects of the erosion of state and local control and authority is evident in the area of water resources management. The power and authority reserved to the states in the management of water resources, now usurped by the federal government, shall be returned to the states and local governments.

Resolution No. 2001-6

SETTLEMENT OF INDIAN RESERVED RIGHTS

The CRWUA supports the settlement of Indian reserved water rights by negotiation or agreement, recognizing that:

1. After the resolution of Indian reserved water rights by negotiated settlement, Indians and non-Indians will still be neighbors sharing a common resource that is vital to their continued existence;

2. Controversies over Indian reserved water rights occur because the federal government has frequently failed to fulfill its trust duties to protect and assert tribal water rights with the result that non-Indian economies have developed in reliance on rights to use water that do not always adequately account for Indian reserved rights;

3. Settlements should result in the least possible disruption of existing water uses and the economics based on those uses, while at the same time providing the affected tribes with the firm water supplies required to meet the long-term needs of the reservation inhabitants and to establish lasting tribal economies;

4. The achievement of these objectives requires federally funded water projects designed to ensure that all of the tribal water needs in the subject basin or watershed are met;

5. The participation of the State, local governmental entities and non-Indian water users in the settlement process is required for the success of any negotiated settlement.

Resolution No. 2001-7

SAFE DRINKING WATER SUPPLIES

1. When considering the establishment and enforcement of regulations and Maximum Contaminant Levels (MCL), we urge the Environmental Protection Agency (EPA) to:

   a. Allow public water suppliers adequate flexibility to achieve the optimum level of health protection at a reasonable cost;

   b. Recognize that the public and private water suppliers are responsible for water quality only in their distribution system and have no control over contamination of drinking water caused by the consumers' plumbing systems; and,

   c. Support federal, state and local consumer awareness and education programs regarding the safe drinking water requirements and related health protection.

2. We further urge the EPA to actively pursue protection of drinking water supplies in the following areas:

   a. Lead: Provide effective technical and financial assistance for implementing the congressional ban on use of lead bearing solder, pipes, or fittings in drinking water plumbing systems, while focusing corrosivity control requirements in areas with a high potential for lead leaching.

   b. Radon: Provide effective technical and financial assistance for public education programs for the detection and control of radon in residential homes and building, while avoiding adoption of any radon standard where implementation costs are disproportionate to health benefits.

   c. Perchlorate: Encourage and expedite the necessary research to establish a MCL for perchlorate in drinking water supplies. Encourage and help fund the inventory of sites throughout the United States that have used perchlorate and support an assessment of potentially impacted drinking water supplies and encourage the clean-up of perchlorate-contaminated supplies.

   d. Source Water Quality Protection Plans: Encourage efforts by Colorado River Basin states to work together to establish source water quality protection plans for both ground and surface water. Provide funding for improvements through state revolving funds and to keep the public informed on the quality of its drinking water.

e. The appropriate flexibility for the states in administering their drinking water state revolving funds and allowing financial assistance to be provided for the construction and rehabilitation of dams or reservoirs, the purchase of necessary land, and the purchase or acquisition of required water rights, when such actions have been determined to be the most cost-effective alternative and environmentally sound solution for providing a safe and reliable supply of drinking water.

Position Statement
Safe Drinking Water Supplies
(Resolution 2001-7)

Protection of safe public drinking water supplies is of primary importance to the members of this Association as well as to the nation generally. Congress enacted the Safe Drinking Water Act (SDWA) in 1974, directing the Administrator of the Environmental Protection Agency to set national drinking water quality standards (42 U.S.C. Sec. 300f, *et seq.*); amended that Act in 1986 (PL 99-339) by directing the Administrator to, among other things, set maximum contaminant level goals; and reauthorized the Act in 1996 with major improvements and changes.

Lead has been used in such products as paint and gasoline for many years. EPA, through its ban on lead in gasoline, paint and solders, has significantly reduced environmental lead exposure. Nationally, lead in water makes up less than 10 percent of an adult's lead intake. In the continuing effort to assure safe drinking water supplies, EPA and others are developing
more stringent methods to protect against lead contamination. Most lead contamination in water occurs as a result of prior use of lead-bearing solder, pipes and fittings in constructing plumbing systems in homes and businesses. The 1986 amendments to the Safe Drinking Water Act (SDWA) added a general prohibition on use of lead materials for installing or repairing plumbing systems (42 U.S.C. 300g6).

The EPA finalized regulations establishing requirements to minimize lead in drinking water supplies, which includes corrosion control, public education, lead service line replacement and source water treatment to reduce lead levels in drinking water. EPA, in addition to implementing the final regulation, should continue to enforce the ban on the use of lead-bearing materials in home plumbing systems as required by SDWA. Enforcement at the source of pollution is more effective and efficient than requiring water purveyors to introduce corrective measures.

The CRWUA supports definition of "control by the supplier" specifically as plumbing owned and operated by the supplier for all constituents. Lead contamination is a prime example since public water suppliers may be able to reduce the corrosivity of their drinking water; however, the water supplier has no control over lead leaching from the homeowners' pipes.

Scientific and technical regulations must allow for public input in their development. For example, if Congress does not believe that the lead regulation is stringent enough, it should legislatively direct EPA to craft more stringent requirements. In this regard, public water suppliers should support a mandatory public education program. More stringent treatment technique requirements are not feasible, cost-effective or more health protective. These requirements, on the other hand, would cost water users millions of dollars without significant improvement in public exposure to lead in the environment generally.

Radon is a serious inhalation health concern in some areas with a minimal contribution from the drinking water supply. Because the SDWA requires the regulation of radon in drinking water, public water suppliers should have adequate flexibility to minimize the radon water contribution at a reasonable cost, when the radon in the water contributes meaningfully to the airborne radon levels. Most importantly, public

education programs should be supported to educate the public on ways to control radon in residential homes and buildings.

Recently perchlorate has been detected in some groundwater supplies in California and in Colorado River supplies in the lower basin. Some knowledge of the health effects of perchlorate is available since perchlorate was used at one time to treat Graves Disease (overactive thyroid). However, specific research needs to be conducted to establish a Maximum Contaminant Level (MCL) for perchlorate under the SDWA. Also the use of perchlorate has been nationwide. An assessment of industries that have utilized perchlorate needs to be conducted as well as an assessment of potentially affected drinking water supplies.

Recent experience and investigations indicate that disposal of solid waste in dump sites overlying community groundwater supplies can pose a serious threat of contamination to those

supplies, particularly where those sites are located in highly permeable areas that provide little or no opportunity to correct failures of containment systems. The federal government already exercises authority over such dump sites under the Resource Conservation and Recovery Act (RCRA) in cooperation with state and local agencies.

Under the new SDWA, EPA is required to develop a revised drinking water standard for arsenic. The standard may be considerably more stringent; however, serious doubts have been raised about the accuracy and applicability of the health effects information that is being used for the determination of the revised standard. Currently there are a number of national and regional data-gathering projects being conducted as well as research on epidemiological impacts, treatment technologies, health effects, and analytical methods. Due to the potential impact of arsenic standard on water utilities, research into the health effects of arsenic in drinking water should be supported.

Finally, EPA should provide adequate flexibility to public water suppliers to use their financial and technical resources to provide optimum public health protection.

Resolution No. 2001-8

SAFE DRINKING WATER ACT

Capacity Development:

1. EPA included in its SDWA regulations a "review" of the content of state capacity development strategies requirement which CRWUA believes is not found in the statute. CRWUA believes that states should have total flexibility over the content of state capacity development programs for existing systems.

2. CRWUA believes that EPA should heed Senator Kempthorne's comment to the effect that: "The bill also gives States the sole authority to design and implement capacity development strategies to ensure that drinking water systems have the financial, technical and managerial resources they need to comply with this law. Under the old regulatory approach, we would have required States to adopt a strategy and submit it to EPA for review and approval. But we do not do that here. Once a State adopts a capacity development strategy, EPA has no authority under this law to second-guess it or penalize the State by withholding federal funds."

Groundwater Disinfection Rule:

1. The SDWA requires EPA to develop a rule which requires disinfection "as necessary" for groundwater systems. As necessary should mean "when contaminated," not water that "may potentially" become contaminated. Furthermore, EPA should not dictate how communities meet the standard. All EPA instructions on how to operate a community water system to prevent contamination should be non-regulatory (information, grants, training and education).

Consumer Confidence Reports:

1. EPA has inappropriately attempted to limit state flexibility in the production and dissemination of consumer confidence reports. Also EPA has gone beyond statutory mandates in requiring (i) additional source water information, (ii) additional explanatory information, and (iii) requiring states to warehouse the reports. This may result in unnecessarily complex and burdensome report obligations. CRWUA believes that EPA should err on the side of flexibility in implementing consumer confidence report requirements.

Resolution No. 2001-9

RURAL COMMUNITY WATER AND SEWER SYSTEMS

Drinking water and sewer systems developed under USDA programs shall be protected. Encroachment by other systems into USDA grant or loan drinking water and sewer systems shall not impair the ability of the system to deliver water, provide service or pay financial obligations.

Position Statement
Rural Community Water and Sewer Systems
(Resolution No. 2001-9)

USDA drinking water and sewer programs provide drinking water and sewer services to many rural residents. The programs provide the ability to develop systems and to expand existing facilities. In the last 30 years, USDA programs have helped fund approximately 17,000 water and sewer projects serving more than 12,500 rural communities.

The programs have the lowest default (less than 0.1%) and delinquency (less than 2%) rates of any government loan assistance program. Repayment is structured according to the ability of the system (through rate payments by system beneficiaries) to charge for services.

Current federal law protects USDA drinking water and sewer programs from encroachment by other systems. This protection insures that systems will continue to have the ratepayer base necessary to make the payments. If federal law protection of these systems is altered, impaired or repealed the systems will not be able to repay loans.

Resolution No. 2001-10

FUNDING THE UPPER COLORADO AND SAN JUAN RIVER BASIN ENDANGERED FISH SPECIES RECOVERY PROGRAMS

. The Association supports the appropriation of cost-sharing funds by the Congress and the Legislatures of the States of Colorado, New Mexico, Utah and Wyoming for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin and the San Juan River Basin Endangered Fish Species Recovery Implementation Program.

Position Statement
Funding The Upper Colorado And San Juan River Basin Endangered Fish Species Recovery Programs
(Resolution 2001-10)

The Colorado River Basin is home to 14 native fish species and four of those species are listed as endangered under the federal Endangered Species Act (ESA). The Colorado squawfish, razorback sucker, bonytail and humpback chub, as endangered species, are protected by state laws and the federal ESA. Two cooperative intergovernmental programs have been established to accomplish ESA compliance for these four species of fish while allowing the Upper Colorado River Basin States to use and develop Compact-apportioned waters of the Colorado River. The Upper Colorado River Recovery Implementation Program was initiated in 1988 and the San Juan Recovery Program in 1992.

Through the recovery programs, federal and state government agencies, Indian tribes and private organizations are working in partnership to achieve recovery of endangered fish while balancing the continuing demands for water in the arid West. The Upper Colorado River and San Juan River Basin Programs have provided the reasonable and prudent alternative to avoid "jeopardy" ESA Section 7 biological opinions.

Requests for funding for the recovery programs have been supported by Congress because the programs serve as dispute resolution mechanisms between endangered species conservation and water development. The amount of Program funding required is increasing because capital construction projects (fish passage structures, hatcheries, habitat restoration, etc.) are underway.

Resolution 2001-11

LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM

The Colorado River Water Users Association (CRWUA) supports the Lower Colorado Basin States, the Secretary of the Interior, Lower Colorado Basin tribes and private entities in the development of a Lower Colorado River Multi-Species Conservation Program (LCRMSCP), which is scheduled for completion in April 2002. The CRWUA recognizes that funding for the development and implementation of the LCRMSCP will be needed and Congress is urged to adequately fund the development and implementation of the LCRMSCP.

Position Statement
Lower Colorado River Multi-Species Conservation Program
(Resolution 2001-11)

The Lower Colorado River Multi-Species Conservation Program is a partnership between State,

Federal, Tribal, Water, Power, local government and private entities with interests in Lower Colorado River resources. The purpose of the partnership is to participate in the development of a multi-species ecosystem-based conservation program while accommodating the management and potential future development opportunities of water and hydroelectric power resources within the Lower Colorado River Basin. This partnership functions as the LCRMSCP Steering Committee.

In January 1997 the U.S. Fish and Wildlife Service designated the LCRMSCP Steering Committee as an Ecosystem Conservation Recovery and Implementation Team (ECRIT). The designation is pursuant to Section 4(f)(2) of the Endangered Species Act which authorizes the Secretary of the Interior to procure the services of appropriate public and private agencies, institutions and other qualified persons to help implement recovery actions.

A Memorandum of Agreement, signed by representatives of the Lower Basin States and the Department of the Interior in August 1995, specified the goals and objectives of the LCRMSCP. These goals and objectives include the following:

- Conserve habitat and work toward the recovery of included species within the 100-year floodplain of the Lower Colorado River (LCR), pursuant to the Endangered Species Act (ESA), and attempt to reduce the likelihood of additional species listings under the ESA; and

- Accommodate current water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with law.

The Steering Committee adopted a list of over 100 species that currently occur or have historically occurred within the LCRMSCP planning area for consideration for inclusion in the Program. This list includes federal and state-listed threatened, endangered, and sensitive species occurring within the LCR mainstem and associated 100-year floodplain and reservoir full-pool elevation.

In summary, the Lower Colorado River MSCP is extremely important. It is an innovative and proactive program intended to address endangered species issues, prevent future listings of species and still provide for continued and future use of Colorado River resources. The LCRMSCP is intended to meet endangered species compliance requirements in the Lower Colorado River Basin for the next fifty years.

Resolution No. 2001-12

SUPPORT OF THE AMENDMENT TO THE
COLORADO UTE WATER RIGHTS SETTLEMENT ACT

The Colorado River Water Users Association, which includes the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and the Colorado River Tribes Partnership, supports the compromise adopted by the two Colorado Ute Indian Tribes and water users in Colorado and New Mexico to proceed with the revised Animas-LaPlata Project within the existing environmental constraints imposed by the Endangered Species Act.

The Colorado River Water Users Association supports S. 2508 and asks Congress to enact such legislation to amend the Colorado Ute Indian Water Rights Settlement Act of 1988 by authorizing the Secretary of the Interior to settle the tribal claims to water on the Animas and La Plata Rivers in Colorado by

the construction of a greatly reduced Ridges Basin Reservoir (originally contemplated as a part of the Animas-La Plata Project) which would (1) supply municipal and industrial water to the Colorado Ute Tribes, the Navajo Nation and non-Indian communities in southwest Colorado and northern New Mexico, and (2) be constructed in compliance with the national environmental laws.

Position Statement
Support of the Amendment to the Colorado Ute Water Rights Settlement Act
(Resolution 2001-12)

S. 2508 is the latest legislative effort to amend the Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973, which sought to settle the reserved rights claims of the Southern Ute and Ute Mountain Ute Indian Tribes through the construction of the Animas-La Plata Project so that all of southwest Colorado and northern New Mexico would receive much needed water supplies. Although the current legislation contemplates a much smaller reservoir than originally envisioned as part of the Animas-La Plata Project and also eliminates the irrigation component of the original settlement, the concepts in the legislation have been endorsed by the Colorado Ute Tribes, the States of Colorado and New Mexico and the local water users as the only way to move forward with the much needed storage facility. The compromise contained in the legislation reflects the dedication of those parties to finding a solution to the tribal claims that ensures the Tribes the water that they need for the future without taking water away from their non-Indian neighbors. It also would comply with the national environment laws.

As reflected in the 1988 Settlement Act, the original settlement quantified the tribal water rights on all of the streams involved in the litigation. The settlement also established a method to administer such rights in the future. At the heart of the settlement was the provision of water to the two Tribes from the Animas-La Plata Project. The development of additional supplies of water from the Animas and La Plata Rivers through the project allowed the Tribes to receive a firm water supply to meet their present and future needs without taking water away from their non-Indian neighbors. The Tribes were to receive water from the project for the irrigation of tribal lands as well as for municipal and industrial uses. Likewise, the non-Indian communities in the area were to receive both irrigation and municipal and industrial water supplies from the project. A variety of modifications to the project were endorsed by Congress to facilitate the settlement. However, unless the facilities required to provide water for the Tribes were completed by January 1, 2000, the Tribes retained the right to return to court on the Animas and La Plata Rivers to litigate their reserved rights. That option must be exercised by January 1, 2005.

However, following the passage of the 1988 Settlement Act and the adoption of the consent decrees, the Department of the Interior ("Department") concluded that under the Endangered Species Act, 16 U.S.C. §§ 1531-1544, the full project could not be built in the absence of additional studies on the factors which were limiting the survival and recovery of the endangered Colorado Pike Minnow (then called the Colorado Squawfish). The Department nevertheless determined to build the project in stages, although the initial stage would not

satisfy the terms of the 1988 legislation. The Department subsequently determined that the staging of the project required the preparation of a supplemental environmental impact statement which it did not complete until 1996. In the interim, questions arose under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251- 1387, regarding the water quality impacts of the irrigation component of the project. The environmental community continued to voice strong opposition to the project, ignoring its key role in the tribal settlement and consistently opposing any appropriation in Congress to move the project forward. In addition, the cost of the project had become an issue for some in Congress.

S 2508 is the latest effort by the supporters of the Colorado Ute settlement to find a way to surmount the obstacles that have been placed in the way of the implementation of the part of the tribal settlement calling for the construction of the ALP. The parties to the settlement, and particularly the non-Indian irrigators, have made many compromises in order to try to find a way to resolve the tribal claims. Moreover, the Administration in its proposal of August 11, 1999, recognized that the construction of an off-stream storage facility was likely to be a key component of any settlement. S. 2508 reflects the concepts in the Administration proposal. In short, S. 2508 is a carefully considered method to overcome the problems that have halted the implementation of the 1988 Settlement Act by the construction of a storage facility to supply water to the Tribes while preserving existing uses of water. It should be enacted by the Congress.

Resolution No. 2001-13
ENLIBRA DOCTRINE FOR ENVIRONMENTAL MANAGEMENT

The CRWUA fully supports the set of principles for Environmental Management in the West recently adopted by the Western Governors Association known as EnLibra. The CRWUA urges local, state and federal governmental agencies and private organizations and entities to apply these principles in addressing and resolving environmental management conflicts and issues.

Position Statement
EnLibra Doctrine for Environmental Management
(Resolution No. 2001-13)

In early 1998, the Western Governors Association adopted a shared doctrine to guide natural resource and environmental policy development and decision-making in the West. The doctrine is based on eight principles. This shared set of principles were agreed upon as policy by the Western Governors Association. This doctrine has been named "EnLibra," which is a newly-created word meaning balance and stewardship. As the Western Governors have struggled with environmental problems, it has become evident to them that there are common issues in their environmental challenges, regardless of the specific issue, and that successful solutions share common principles. The CRWUA commends the Western Governors Association on the development and implementation of this newly-created, shared doctrine for improving and expediting environmental decision-making and commits to assisting in applying this doctrine to environmental and natural resource-related issues and problems across the Colorado River Basin.

The eight EnLibra principles are:

1. National Standards, Neighborhood Solutions -- Assign Responsibilities at the Right Level
2. Collaboration, Not Polarization -- Use Collaborative Processes to Break Down Barriers and Find Solutions
3. Reward Results, Not Programs -- Move to a Performance-Based System
4. Science for Facts, Process for Priorities -- Separate Subjective Choices from Objective Data Gathering
5. Markets Before Mandates -- Replace Command and Control with Economic Incentives
6. Change a Heart, Change a Nation -- Environmental Understanding is Crucial

7. Recognition of Costs and Benefits -- Make Sure Environmental Decisions are Fully Informed.

8. Solutions Transcend Political Boundaries -- Use Appropriate Geographic Boundaries for Environmental Problems

Resolution No. 2001-14

URANIUM MILL TAILINGS PILE NEAR MOAB, UTAH

The Colorado River Water Users Association (CRWUA) urges the United States Nuclear Regulatory Commission (NRC) and the United States Environmental Protection Agency (EPA) to actively pursue protection of Colorado River water supplies with regards to the Atlas Corporation's uranium mill tailings pile near Moab, Utah.

Position Statement
Uranium Mill Tailings Pile Near Moab, Utah
(Resolution No. 2001-14)

The Colorado River provides important water supplies for more than 23 million Americans in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Nearly 3 million acres of farmland are irrigated within the Colorado River Basin and hundreds of thousands of acres are irrigated by waters exported from the Basin. The Colorado River also supplies water to about 1.7 million people in Mexico and over half a million acres of irrigated farmlands in the Republic of Mexico. Therefore, protection of water quality from sources of contamination is critical. The CRWUA is committed to source protection as the best strategy over treatment by downstream users.

The 10.5 million ton pile (covering 130 acres; 110 feet high) of uranium mill tailings (located 500 to 700 feet from the Colorado River, 150 miles upstream of Lake Powell) left by the Atlas Corporation near Moab, Utah is currently leaking uranium and other contaminants into the groundwater under the pile and the groundwater is seeping into the Colorado River at an estimated rate of 50 gallons per minute. The remediation proposal by the Atlas Corp. to the NRC calls for leaving the tailings pile in place and capping the pile to reduce the current infiltration into the Colorado River. Other parties and proposed legislation call for the tailings pile to be removed away from the Colorado River and properly disposed of at a licensed site for disposal of these materials. Whatever proposal is finally selected, the goal of any prescribed action should be to protect down stream users from contamination as well as to safeguard this important, vital water resource. Any remediation proposal selected for this site needs to meet this standard.

As part of any engineered solution that leaves the tailings pile in place, the CRWUA urges the NRC to require that monitoring of the effectiveness of the solution be continually conducted. Monitoring should be taken at the site as well as several locations downstream. If contamination continues to leach into the Colorado River from the tailings pile despite the best engineering efforts to cap and collect this contamination, the NRC should take action to remedy the situation. Accordingly, the NRC or other regulatory agency must retain jurisdiction over the site and ensure that there is sufficient legal authority and financial capability to take further action as necessary, including the possible removal of the uranium pile should engineering solutions fail to adequately protect this water supply.

Resolution No. 2001-15

FEDERAL ACTIONS TO DESIGNATE OR REDESIGNATE LANDS

Any federal action to create, within categories, designate (or redesignate) lands shall not affect or impair existing water rights or uses. Such designation shall not create any water right or use. Designation actions shall defer to state law and be made subsequent to consultation with the affected State(s) and Congressional delegation(s).

Position Statement
Federal Actions to Designate or Redesignate Lands
(Resolution No. 2001-15)

Prior designation or redesignation of federal lands have impaired water rights and their use throughout the Colorado River Basin. Such designations are contrary to sound public policy and have occurred without appropriate deference to state law regarding the use and control of water resources, without public input, and without adequate analysis of the impacts on the human environment.

Past and proposed applications of the 1906 Federal Antiquities Act in designation of national monuments are an affront to the affected states' rights. Designations under the 1906 Antiquities Act should only be made after consultation with the affected State(s) and Congressional delegation(s).

Resolution No 2001-15

CRITICAL IMPORTANCE OF MAINTAINING WATER AND POWER INFRASTRUCTURE ON THE COLORADO RIVER

Federal dams and their reservoirs in the Colorado River Basin provide significant regional and national benefits, including the following:

- Municipal, agricultural, and industrial water supply
- Clean, renewable hydroelectric power
- Flood control
- Navigation
- Recreation and fishery benefits
- Environmental resource restoration

Proposals to breach or remove federal dams in the Colorado River Basin pose an alarming challenge to water supply, water rights, water quality and power production for millions of consumers. Such proposals already have been advanced in several other major river systems and implementation of such proposals with respect to federal dams in the Colorado River Basin would pose immediate threats to the Colorado River Basin states' water project infrastructure.

In addition, removal of federal dams in the Colorado River Basin would negatively impact the federal debt repayment obligation associated with such dams. These proposals should be rejected. The vast benefits of the Colorado River Basin's federal multipurpose water projects are too valuable to discard.

Due to the significant local, regional and national benefits provided by federal dams in the Colorado River Basin and the waters associated with such dams, the Colorado River Water Users Association opposes the

following:

- Removal, bypass or breaching of federal dams in the Colorado River Basin , and
- Restricting or abrogating in any way a state's rights to manage or control its water resources in accordance with the Colorado River Compact, the Upper Colorado River Basin Compact, state and federal law.