



2012 Resolutions

**Adopted by
The Membership of the
Colorado River Water Users Association**

**at their Annual Business Meeting
On December 15, 2011
In Las Vegas, Nevada**

The Colorado River Water Users Association is a non-profit, non-partisan organization providing a forum for exchanging ideas and perspectives on Colorado River use and management with the intent of developing and advocating common objectives, initiatives and solutions.

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Introduction to CRWUA's 2012 Resolutions

The membership of the Colorado River Water Users Association (CRWUA) annually update and adopt a comprehensive set of resolutions addressing the major issues and externalities affecting the sharing, use and further development of the Basin's water supply. As the Colorado River is one of the most regulated rivers in the country, a complex set of state and federal statutes, regulations and judicial decrees, interstate compacts and an international treaty (collectively referred to as "the Law of the River") govern the allocation and water management decisions affecting conservation storage, releases and uses made by the 33 million people who depend on the River for their water supply.

The CRWUA's resolutions are addressed to, among others, national, local and state governments and nongovernmental organizations. These resolutions advocate sound public policy positions to maximize beneficial consumptive use of the available water supply while appropriately conserving important environmental resources, promote storage to ameliorate drought conditions and support generation of electrical power at the many hydroelectric plants and federally constructed reservoirs in the River Basin and preserve the rights and prerogatives of the seven states through which the 1200-mile long river flows. Collaboration and cooperation to accomplish mutually beneficial environmental restoration and necessary water development actions are encouraged in these resolutions; they emphasize the maintenance of long-established legal frameworks and water management tenets (including satisfaction of contractual water supply rights) affecting water supply certainty and dependability in the arid, desert country through which the River flows. The positions espoused by CRWUA's resolutions support the continuation of basin-wide water quality improvement programs and environment restoration programs to stretch the finite water supply available in the fastest growing region of the United States. In short, CRWUA's resolutions address local, state, regional, national and international relationships among the many interdependent parties who rely on this internationally-critical, region-wide water supply.

Position statements framing the relevant issues and justifying the Association's resolutions are found on the CRWUA website: (<http://www.crwua.org/Resolutions.aspx>). The adopted resolutions reflect consensus of the hundreds of diverse water users who gather from across the seven state area (comprising one-twelfth of the United States land surface) each December at the annual CRWUA conference and have been doing so for more than sixty years. Each of these resolutions is in effect until the 2012 annual conference of the CRWUA.

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COLORADO RIVER WATER USERS ASSOCIATION 2012 RESOLUTIONS

Resolution No. 2012-1 --- ENDANGERED SPECIES ACT

Recognizing that the purpose of the federal Endangered Species Act (ESA) is to conserve and recover listed species in a cost effective and timely manner and to maintain and manage the ecosystems upon which threatened and endangered species depend, the CRWUA urges administration of, and legislative amendments to, the federal ESA to:

1. Provide greater involvement of the States, Tribes and impacted entities in listing decisions, critical habitat designations, recovery planning, Habitat Conservation Plans, Safe Harbor agreements and more.
2. Recognize and protect property rights and water rights.
3. Fairly treat property owners and water right holders.
4. Minimize social and economic impacts.
5. Use sound science in concert with clear and objective scientific standards for listing of species and designation of critical habitat.
6. 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.
7. Require the Federal Government to comply with all applicable state laws and regulations regarding water resources and water management in administering the ESA.
8. Continue 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 Recovery Implementation Program.
9. Adequately fund implementation of the Lower Colorado River Multi-Species Conservation Program by Congress, the Legislatures of the Lower Colorado Basin States and other program participants.
10. Be proactive in efforts to mitigate potential conflicts with listed species that might be caused by additional stressors on the limited Colorado River water supply, including those caused by natural or regulatory drought, increasing demands or other factors that would reduce the reliability of water supplies.

Resolution No. 2012-2 --- CLEAN WATER ACT

The Clean Water Act (CWA) should be utilized only to regulate the discharge of pollutants to waters of the United States. The CRWUA urges:

1. Section 101(g) of the Act should be reaffirmed as applying to all sections and all programs under the Clean Water Act. The Clean Water Act and any amendments thereto shall not directly or indirectly create a federal water quality law or program which supersedes, abrogates or impairs state water allocation systems or compacts and rights to water created and managed thereunder.
2. The CWA should not be expanded, construed or applied to create a national recreational, cultural, historical, ecological, habitat, aesthetic, instream flow, or land use law or program, or otherwise be used to regulate anything other than the protection of designated water body uses and the control of point and nonpoint pollutant discharges.
3. The purpose and need for water development projects proposed by states, tribes or other local governmental subdivisions should be defined by the project sponsor.
4. State certification requirements under Section 401 of the CWA should not be used directly or indirectly to control activities which do not result in a discharge of pollutants.
5. States should be allowed to develop and administer water quality standards appropriate for ephemeral and/or effluent dominated streams taking into account (i) the intermittent nature and other physical limitations of such streams, (ii) the net environmental benefit associated with the continued discharge of water to such streams, and (iii) the need to protect downstream beneficial users. Congress and EPA should recognize the value of water reuse and increased instream flow associated with reclamation and reuse projects.
6. EPA should defer to state classifications for intrastate bodies of water, state-established water quality standards for the protection of such classifications, and other aspects of state implementation of the CWA.
7. States should exercise primary authority in meeting the requirements of Section 303(d) of the CWA, with specific reference to:
 - the identification of impaired water bodies;
 - the prioritization of impaired water bodies;
 - the establishment and implementation of total maximum daily loads (TMDLs);
 - and the selection of appropriate mechanisms for addressing non-point sources of pollutants.
8. The concept of “navigability” as currently in the CWA must remain intact, with the continual recognition of (i) the constitutional and statutory limitations on the scope of federal jurisdiction and (ii) due deference to state and local authority. Accordingly, in any amendments to the Act where the federal jurisdiction over surface waters of the U.S. is changed, the Congress should adopt a definition of “waters of the U.S.” consistent with 40 CFR 122.2.

9. The identification and implementation of any anti-degradation policy including but not limited to the designation of outstanding national resource waters shall be a state prerogative.
10. Water conservation and water use efficiency measures should be addressed separate and independent of the CWA so that such measures may be evaluated on their own merits rather than tied to permit or grant and loan programs associated with the elimination of pollutant discharges under the CWA.
11. No provision of the CWA should allow a state or Indian tribe to apply its water quality standards in such a fashion as to (1) supersede, impair, or abrogate the water allocation system of another state or tribe or waters decreed thereunder, or (2) cause an unreasonable economic burden to be placed upon such other state or tribe where that state or tribe has ensured the establishment of classifications and standards for waters within its jurisdiction and such standards are being appropriately enforced.
12. A Good Samaritan provision should be adopted which allows for the prompt voluntary clean-up of abandoned mine drainage without fear of unwarranted liability attaching to such actions.

National Pollution Discharge Elimination System (NPDES) Permits:

13. Use of materials approved by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act should not be subject to CWA regulation when used in accordance with label instructions.
14. Irrigation canals and facilities constructed for the transportation, storage, and treatment of water for public water supply purposes should not be classified as waters of the United States for regulatory purposes.
15. The discharge of water from a water transfer that conveys or connects to waters of the United States without subjecting the transferred water to intervening industrial, municipal or commercial use should not require an NPDES permit under Section 402 of the CWA. The EPA should not rescind, reconsider or change its rule to this effect. States should determine the best method to control, if necessary, pollutants contained in transferred water, including non-point source control methods. Use of water for power generation in a hydroelectric facility in the course of such a water transfer should not be considered an intervening industrial, municipal or commercial use for NPDES permitting purposes.

Dredge and Fill Permits:

16. The EPA and the U.S. Fish and Wildlife Service should 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.
17. Water surfaces and water-related vegetation areas artificially created incidental to irrigation, hydropower, flood control and water supply projects and intrastate wetland

areas that are not hydrologically connected to other bodies of water should not be classified as waters of the United States for regulatory purposes.

Non-Point Source:

18. The CWA should encourage necessary, cost effective and reasonable voluntary measures to control non-point source discharges including the use of best management practices (BMPs) and pollutant trading.
19. Non-point source controls should 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 that watershed.

Federal Mandates:

20. The CWA should 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 unless dictated by substantiated societal health and safety considerations.
21. Actions required by the CWA should be supported by adequate federal funding.
22. No private property should 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. 2012-3 --- RECLAMATION

The CRWUA urges the U.S. Bureau of Reclamation (Reclamation) to honor commitments regarding maintenance of project infrastructure and governing storage and release of water on behalf of contract holders, in accordance with the following:

1. Project benefits should not be reallocated without the consent of project beneficiaries. Beneficiaries should not pay for project benefits reallocated to another use. Changes in project operations should not impair existing contracts or water rights under state law.
2. The federal government should pay for environmental enhancement and mitigation. Existing contracts should not be surcharged for environmental enhancement or mitigation.
3. Water service contracts should be renewed for the same quantity of supply as has been historically beneficially used and should provide the same availability to water users as has been historically enjoyed. Water service contracts should be renewed for the maximum allowable term.
4. All reservoirs and dams on the Colorado River should be operated in compliance with applicable law and authorized project purposes. Operational changes to benefit recreation, fishery or environmental mandates should minimally impact hydropower

production. The federal government should pay for replacement power due to operational changes for recreation, fishery or the environment.

5. Reclamation-constructed and maintained water storage and conveyance systems situated throughout the Colorado River Basin are critically important to the economies, the quality of life and the survival of the people who depend upon waters from the Basin. In order to avoid huge financial impacts associated with performing maintenance that was deferred or making future repairs on an emergency basis, Congress should recognize and appropriate requisite funding to maintain aging, critically important water and power infrastructure in the Colorado River Basin and across the West.
6. Reclamation should immediately commence and fully implement the measures identified in its *Managing for Excellence* action plan, issued in response to the National Research Council's *Managing Construction and Infrastructure in the 21st Century Bureau of Reclamation* report, including transfer of operation and maintenance responsibility to project sponsors when they are capable and willing to take over such responsibility.

Resolution No. 2012-4 --- COLORADO RIVER SALINITY CONTROL

The CRWUA urges continued funding and implementation of measures to control the salinity of the Colorado River. The Administration should request and Congress should provide sufficient funding for the Colorado River Basin Salinity Control Program.

Resolution No. 2012-5 --- SETTLEMENT OF INDIAN RESERVED RIGHTS

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

1. Settlements should result in the least possible disruption of existing water uses and the economies 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.
2. 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.
3. Appropriate participation of the Federal, State, local governmental and Tribal entities, and non-Indian water users in the settlement process is required for the success of any negotiated settlement.
4. Any water rights settlements that have been approved by the respective parties should be immediately and fully funded to implement their terms within the specified timeframes. The Federal Government must take advantage of existing funding authorizations, such as Title VI, Emergency Fund for Indian Safety and Health, of P.L. 110-293, by complying in a timely manner with Congressional mandates and budgeting funds, while continuing to explore and develop new creative solutions to fund Indian water rights settlements.

5. Negotiation teams possessing the requisite technical, legal and political expertise should be appointed by the federal government and must actively participate in tribal water settlement negotiations to facilitate informed water rights decisions being made by all parties. Sufficient financial resources must be made available by the federal government to allow these settlement negotiations to move forward.

Resolution No. 2012-6 --- MITIGATING WATER QUALITY IMPACTS DUE TO THE URANIUM MILL TAILINGS PILE NEAR MOAB, UTAH

The CRWUA urges the Congress to appropriate sufficient funding to allow the Department of Energy (DOE) to relocate the Atlas Corporation's uranium mill tailings pile near Moab, Utah, away from the Colorado River. The DOE must expedite the relocation of the tailing pile to meet the deadline established in the authorizing legislation.

Resolution No. 2012-7 --- COLORADO RIVER DELTA

In recognition of the authority and interests of the seven Colorado River Basin States in the water, power, recreational and environmental resources provided by the Colorado River, the CRWUA urges:

1. The federal government to communicate closely with and encourage the participation of each of those states in addressing issues of mutual interest between the United States and Mexico concerning the Colorado River Delta; and,
2. The federal government to use the following criteria to guide discussions concerning the Colorado River Delta:
 - Each of the water apportionments among the Basin states must remain certain and unimpaired.
 - Any proposal to manage or deliver water for any purpose in the Colorado River Delta must be undertaken pursuant to the Law of the River, and must not enhance, diminish, or abrogate any provision thereof, particularly the 1944 Treaty between the United States and Mexico.
 - Any proposal to manage water and other natural resources for environmental purposes in the Delta involving the United States should be consistent with clearly articulated and mutually agreed upon habitat, species, or environmental goals, not merely maintaining the status quo quantity and quality as a minimum.
 - Any alternative to assist in improving the environment in the Delta will require study and innovative solutions involving conservation, improved water management and non-water related actions.

Resolution No. 2012-8 --- USE AND MAINTENANCE OF WATER SUPPLY FACILITIES

The CRWUA urges:

1. Reclamation to maintain the maximum practical amount of reservoir conservation storage in each of the Colorado River system reservoirs it manages.
2. Reclamation and the Department of the Interior to exercise their maximum authority under existing law to enter into contracts for the storage of non-project water in excess project space and project water in non-project space, including water for irrigation, municipal and industrial purposes, and for the use of excess capacity in project conveyance and distribution facilities for conveyance of non-project water.
3. Reclamation to focus efforts on and dedicate increased funding to maintain existing water project infrastructure, establish a more proactive infrastructure rehabilitation program and develop additional storage capacity. Water project infrastructure will continue to be needed to meet western population and growth challenges. Water infrastructure is every bit as important as transportation infrastructure.

The CRWUA opposes the removal, bypass or breaching of federal dams in the Colorado River Basin and the restriction or abrogation of states' rights to manage or control their water resources.

Resolution No. 2012-9 --- THE DEPT. OF THE INTERIOR'S *WATERSMART INITIATIVE*

The CRWUA supports the purposes, strategies and programs of the Department of the Interior's new *WaterSMART Initiative*. Aspects of the previous *Water 2025* and *Water for America* programs have been incorporated into the *WaterSMART (Sustain and Manage America's Resources for Tomorrow) Initiative*. This initiative reflects the Department's efforts to foster sustainable water strategies to assist local communities in stretching water supplies and improving water management. Congress should appropriately fund this initiative in future fiscal years.

Resolution No. 2012-10 --- MAINTAINING FINANCIAL STABILITY OF THE UPPER COLORADO RIVER BASIN DEVELOPMENT FUND

The CRWUA urges:

1. Reclamation and the Western Area Power Administration (Western) to implement additional cost-cutting measures to improve the status of the Upper Colorado River Basin Fund and stabilize the Colorado River Storage Project (CRSP) power rate. Reclamation and Western should work in partnership with CRSP customers to develop an operational financial and rate-setting strategy to address hydropower impacts associated with the effects of recurring drought in the Basin, create a sustainable cash flow for the Basin Fund and maintain a viable CRSP power rate.

3. The passage of federal legislation to create a mechanism to allow the appropriation of funds to Reclamation and Western to ensure sufficient funding for CRSP operations and other required annual funding obligations.

Resolution No. 2012-11 --- MANAGEMENT OF LOWER COLORADO RIVER WATER SUPPLIES

The CRWUA urges:

1. The Bureau of Reclamation to expeditiously improve its capability to regulate Colorado River flows at Imperial Dam, and bring the Yuma Desalting Plant (YDP) to operational status. The CRWUA supports the operation of the YDP and urges the United States to make necessary modifications to the YDP and to make sufficient resources available to bring the YDP into full operation in the shortest possible time.
2. Effective operation of the Warren H. Brock re-regulatory water management reservoir at the Drop 2 site along the All American Canal to replace lost regulation capacity previously available at Senator Wash Reservoir.
3. Excavation of sediments accumulated behind Laguna Dam to supplement the existing in-stream storage capacity at Imperial Dam, restore in-channel storage capacity for regulation of flows released from Parker Dam and provide incidental improvements to fish and wildlife habitat between Laguna Dam and Imperial Dam.

Resolution No. 2012-12 --- AUGMENTATION OF COLORADO RIVER WATER SUPPLIES

The CRWUA supports the ongoing Colorado River Basin Water Supply and Demand Study initiated as part of the Department of the Interior's Water Conservation Initiative. The CRWUA urges the Basin States, in cooperation with the Colorado River Basin Tribes Partnership and the Department of the Interior to jointly develop and implement projects to augment the water supply of the Colorado River. These projects should have as their short-term goal to develop and implement augmentation measures as soon as possible to provide significant augmentation by 2020 and to initiate efforts to increase the long-term dependable water supplies of the Colorado River system by at least one-million acre-feet per year by 2050.

Resolution No. 2012-13 --- POTENTIAL CLIMATE CHANGE

The CRWUA urges the Bureau of Reclamation, each of the Basin States' water management and water development agencies, and each water purveyor within the Basin to consider the impacts of potential climate change in all aspects of its water resources management

and planning to assure the continued reliability of the Colorado River water supply and to meet water supply demands in accordance with applicable law.

Resolution No. 2012-14 --- HOOVER POWER ALLOCATION ACT

The Boulder Canyon Project Act of 1928 authorized the Secretary of the Interior to include construction of hydroelectric generation as part of construction of Hoover Dam, and to enter 50-year contracts for the delivery of such power as a source of revenue to cover the cost of constructing and operating the project. In reliance on these contracts, agencies in the three Lower Division States of Arizona, California, and Nevada developed extensive transmission systems to deliver the power to their service areas. Power generated at Hoover Dam now serves over 29 million people with clean, renewable energy.

When the initial power contracts were up for renewal, disputes arose among the contracting parties and litigation was filed. The disputes were finally resolved through an agreement that was adopted by Congress through enactment of the Hoover Power Plant Act of 1984. The contracts executed pursuant to the 1984 Act will expire in 2017, and the Western Area Power Administration is commencing the administrative process for issuing new contracts for this hydropower resource. That administrative process has the potential to re-ignite the disputes resolved by the 1984 Act, creates uncertainty for the existing contractors, and jeopardizes the significant investment those contractors have made in the Hoover Power Plant.

To avoid these problems, the power agencies within the Lower Division States have negotiated terms for a new federal statute that will resolve the allocation of Hoover hydroelectric resources for the existing contractors and will establish a pool of Hoover power to be allocated to new entities without the administrative process.

CRWUA supports the proposed legislation, the Hoover Power Allocation Act, and urges its speedy adoption by Congress.

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