



2008 Resolutions

Adopted by the Members of the
Colorado River Water Users Association
At Their Annual Business Meeting on
Friday, December 14, 2007
Las Vegas, Nevada

The Colorado River Water Users Association is a non-profit, non-partisan organization providing a forum for exchanging ideas and perspectives regarding 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 2008 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 29 million people who depend on the River for their water supply.

The CRWUA's resolutions advocate sound public policy positions that maximize beneficial consumptive use of the available water supply while appropriately conserving important environmental resources, promote storage to ameliorate drought conditions, support generation of electrical power at the many hydroelectric plants at the major 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 water supply. These resolutions are addressed to, among others, national, local and state governments and nongovernmental organizations.

Position statements framing the relevant issues and justifying the Association's resolutions are found on the CRWUA website: (www.crwua.org/pdf/resolutions/2008Resolutions.pdf). 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 sixty years. Each of these resolutions is in effect until the 2008 annual conference of the CRWUA.

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COLORADO RIVER WATER USERS ASSOCIATION 2008 RESOLUTIONS

Resolution No. 2008-1 --- 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 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; and,
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. 2008-2 --- 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. The CWA and any amendments thereto should not directly or indirectly create a federal water quality law or program which abrogates, supersedes or impairs state water allocation systems, compacts or rights to water created and managed under state law.
2. The Federal Government should comply with all applicable state laws and regulations regarding water resources and water management in accordance with the deference established in the Constitution of the United States. 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 should incorporate the sponsor's purpose and need in its entirety. No federal policy or agenda should frustrate or subvert local needs.

3. State certification requirements under Section 401 of the CWA should not be utilized directly or indirectly to control activities which do not result in a discharge of pollutants.
4. States should be allowed to develop and administer 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.
5. 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.
6. 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.
7. The CWA should not be amended to expand the jurisdiction of the federal government under the CWA beyond navigable waters of the United States as currently defined.

National Pollution Discharge Elimination System (NPDES) Permits:

8. 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.
9. 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.
10. The diversion and delivery of water for beneficial use through a water conveyance system from one stream or water body to another, without subjecting the water to intervening industrial, municipal or commercial use, should not require an NPDES permit under Section 402 of the CWA. States should determine the best method to control, if necessary, pollutants contained in water transported by water conveyance structures, including non-point source control methods. Use of water for power generation in a hydroelectric facility in the course of conveying water from one stream or water body to another should not be considered an intervening industrial, municipal or commercial use for NPDES permitting purposes.

Dredge and Fill Permits:

11. 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.
12. 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:

13. 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.
14. 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:

15. 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.
16. Actions required by the CWA should be supported by adequate federal funding.
17. 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. 2008-3 --- 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 project 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 identification and implementation of transfer of operation and maintenance responsibility to project sponsors when the sponsors are capable and willing to take over such responsibility.

Resolution No. 2008-4 --- 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. 2008-5 --- 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 State, local governmental 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.
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.

Resolution No. 2008-6 --- MITIGATING WATER QUALITY IMPACTS TO THE COLORADO RIVER WATER SUPPLY 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. 2008-7 --- 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.
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 agreed upon habitat, species, or environmental goals; and,
 - 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. 2008-8 --- 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. Reclamation and the Department of the Interior should 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.

2. Additional water project infrastructure will continue to be needed to meet western population and growth challenges. In the West, water infrastructure is every bit as important as transportation infrastructure. The CRWUA believes Reclamation must 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.

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. 2008-9 --- THE DEPT. OF THE INTERIOR'S WATER 2025 INITIATIVE

The CRWUA supports the purposes of the Department of the Interior's (DOI's) *Water 2025 Initiative: Preventing Crises and Conflict in the West* and encourages DOI to expand this initiative by including a water supply enhancement component. The CRWUA concurs in the view that crisis management is not an effective solution to meeting water supply challenges. The Association recognizes that appropriate solutions to complex water supply issues must recognize and respect state, tribal, and federal water rights, contracts, and interstate compacts and decrees of the United States Supreme Court that allocate the right to use water. Congress should fund this initiative at levels requested by the DOI.

Resolution No. 2008-10 --- 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.
2. The passage of federal legislation to create a mechanism to allow the appropriation of funds to the USBR and Western to ensure sufficient funding for CRSP operations and other required annual funding obligations.

Resolution No. 2008-11 --- 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. Urges construction of the proposed 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. Supports the 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 to provide incidental improvements to fish and wildlife habitat between Laguna Dam and Imperial Dam.

Resolution No. 2007-12 --- AUGMENTATION OF COLORADO RIVER WATER SUPPLIES

The CRWUA urges the Basin States and the Department of the Interior to cooperatively 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 long-term 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. 2008-13 --- 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 include 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.

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2008 Supporting Position Statements

To Accompany the 2008 Resolutions of the

Colorado River Water Users Association

Position Statements Approved by the Resolutions Committee at
their Meeting on **Wednesday, December 12, 2007**
Las Vegas, Nevada

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

CRWUA Position Statements

Introduction

The membership of the Colorado River Water Users Association annually update and adopt a comprehensive set of resolutions addressing the major issues, factors and externalities that do or can affect 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” (LOR)) govern the allocation storage, release and uses of the River’s water. The LOR dictates water resources management decisions made by the 29 million people who depend on the river for their water supply.

The CRWUA’s resolutions advocate sound public policy positions that maximize beneficial consumptive use of the available water supply while appropriately conserving important environmental resources, promote storage to ameliorate drought conditions, support generation of electrical power at the many hydroelectric plants at the major 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. In short, CRWUA’s resolutions address local, state, regional, national and international relationships among the many interdependent parties who rely on this internationally critical water supply. The resolutions are addressed to, among others, national, local and state governments and nongovernmental organizations. Position statements framing the pertinent issues and justifying and expanding upon the resolution accompany each resolution. The full text of each position statement and resolution can be quickly and conveniently accessed on the Association’s website:

www.crwua.org/pdf/resolutions/2008resolutions.pdf.

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COLORADO RIVER WATER USERS ASSOCIATION

2008 Position Statements

To Accompany

The Association's Adopted 2008 Resolutions

Position Statement --- *Endangered Species Act* --- (Resolution No. 2008-1)

The Endangered Species Act of 1973 (ESA or Act) marked a culmination of federal legislative initiatives in the 20th Century to preserve plant and animal species considered endangered, including the Endangered Species Conservation Act of 1966 and the 1969 Endangered Species Preservation Act. Prior to the ESA, wildlife conservation measures were largely the responsibility of individual states. While a majority of local, state and national leaders, including many Members of Congress, along with countless interest groups and associations acknowledge the ESA is failing the public it is supposed to serve and the species it is intended to protect, the ESA has been awaiting reauthorization since 1992. Fixing the ESA is critical – for species, property owners and our nation's economy, security and well-being.

The Colorado River Water Users Association (CRWUA) supports implementation, reauthorization and reform of the ESA to provide consistent and reasonable action for the preservation of endangered species. The Act can and must balance species conservation and recovery with the needs of people. Significant ESA changes, rather than bureaucratic discretion, are required to assure that balance is achieved in practice. CRWUA members are involved in efforts (including the Upper Colorado River Endangered Fish Recovery Program, the Lower Colorado River Multi-species Conservation Program, and the San Juan River Basin Recovery Implementation Program) which demonstrate that cooperative conservation partnerships in working to recover endangered species while allowing continued water use and development. We need a new 21st century ESA. It must be rooted in our nation's founding principles. It must recognize the competing demands for the American West water supply. Recognizing the need to focus on the most important needs first, the CRWUA's focus is on three goals: 1) Increasing the role of the states; 2) Streamlining the Act; and 3) Increasing certainty and direct involvement for landowners and water users.

Reauthorization of the ESA must include reforms to greatly strengthen the role of the states in listing decisions, critical habitat designations, recovery planning, habitat conservation plans, "safe harbor" agreements and more. Alternatives to the rigid, ESA-mandated listing and federal recovery planning regulations are desperately needed. Cooperative agreements providing authority for states and involved entities to initiate threatened and endangered species conservation programs should be encouraged. In cooperation with the states, the Secretary should determine the standards and guidelines for these conservation agreements. These agreements should include landowner certainty provisions and incentives to encourage the involvement of private landowners and other nonfederal parties in these preventive efforts. Cooperative species conservation actions, including candidate species conservation agreements, should be given preference in lieu of ESA species listings. The ESA should provide authority to initiate species conservation plans in advance of listing. If implemented, these plans should provide automatic incidental take permits upon subsequent listing as a means to provide meaningful landowner incentives - and thus enhance opportunities to avoid a species listing.

Importantly, the ESA should authorize conservation plans that are focused on habitat and ecosystem conservation rather than being species-specific.

Increasing certainty for landowners and water users begins with fundamental respect for existing law and rights. The notion the ESA “trumps” other existing law is of tremendous concern to all except those who seek to maintain cost-free land use control through species listing as an end in itself. The Act must be carried out in a manner consistent with other federal laws, authorities and purposes, including the trust responsibility of the United States. The Act cannot abrogate, supersede, supervene or supplant the United States Constitution or the Bill of Rights. The Act cannot 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 species listing.

The ESA does not create federal water law or federal rights in water. Despite efforts by some to do so, the ESA shall not be construed or used to impair, abrogate, supersede, amend or reallocate vested water rights granted by the respective states for beneficial uses; or the rights of beneficiaries to use water as are or have been established by confirmed contracts. The same is true as to the rights of Indian Tribes established by treaty, statute, settlement or decree and for water apportionments made by interstate compact or U. S. Supreme Court decree. Existing historical water uses and depletions and operation, maintenance and repair of existing water storage, diversion and conveyance facilities should be exempt from the ESA. The federal government should not acquire land or water, except on a willing seller/willing buyer basis consistent with state substantive and procedural law, nor should it impair the right to receipt and/or delivery of water within a Reclamation project under existing water storage, repayment or water service contracts.

In 30-plus years of implementing the ESA, the United States Fish and Wildlife Service has found that the designation of critical habitat provides little additional protection to most species while consuming significant amounts of conservation resources and furnishing landowners with negative impressions. America’s farmers, ranchers and private property owners have the most important role in saving endangered species as 90 percent of endangered species in the U.S. have habitat on private land. Research has shown that the current “up-front” and inflexible ESA critical habitat designation procedures have created disincentives for species recovery, rather than improving their plight. A combination of factors has distorted the structure under which critical habitat was designed to function. The ESA currently requires agencies to designate critical habitat at the same time a species is listed as endangered or threatened. Designation of critical habitat should be made at or after the recovery planning stage, when there is sufficient information available to decide what habitat is essential for conservation of the species. Critical habitat designations should be made based on sound science, should be narrow and specific and precisely define the included areas. Areas of unoccupied habitat should be excluded unless sufficient information identifies it as truly essential for the species.

Critical habitat should not be designated until realistic, peer-reviewed economic analyses have fully and comprehensively evaluated the costs of both the species listing and critical habitat designation. The federal government must fully inform the public and other governmental entities of the social and economic costs and benefits of designating critical habitat. ESA administrative actions, including listing, critical habitat designation, and recovery plans, should be taken only after compliance with the National Environmental Policy Act.

Areas covered by habitat conservation plans (HCPs) should be excluded from critical habitat designations. No designation of critical habitat should occur within areas where an “ecosystem management approach” has been adopted to manage resources to facilitate species recovery and avoid listings. Providing “no surprise” assurances for HCPs and Section 7 consultations affecting non-federal parties would encourage public acceptance and involvement.

The development of recovery plans and the recovery of threatened and endangered species, including the provision of adequate funding, is a federal obligation, unless and until full partnership efforts are established. Recovery plans should identify:

- quantified goals, a recovery date target and the probability of recovery;
- critical habitat essential for conservation and recovery of the species;
- actions and realistic estimates of those actions’ cost necessary for recovery; and,
- potential social and economic impacts associated with achieving recovery.

The ESA should unequivocally support artificially propagating populations of endangered species in order to achieve self-sustaining populations and encourage the designation of experimental non-essential populations to facilitate recovery efforts. Where competition between native species and introduced species is a significant factor, responsible artificial propagation may be the only means to recover a species.

Listings, designations of critical habitat and recovery plan development often are not accompanied by adequate public notice and involvement. The ESA should provide more meaningful opportunities for landowners and citizen consultation and involvement. The public has a right to know whether it will be impacted with the implementation of ESA.

Decisions regarding the listing, protection and recovery of endangered species and designation of critical habitat should be based on adequate, verifiable, peer-reviewed, ground-truthed, scientific information that is subject to public scrutiny. The Act should protect only those taxonomic groups that may be significantly different from other groups within the species.

Decisions to list or delist species, designate or rescind critical habitat and approve recovery plans should be made by the Secretary in a timely manner, after independent review of the record, only after appropriate consultation with the Governor or Governors of the state or states impacted by the decision, affected Indian tribes and after a public hearing in the affected area upon receipt of a petition therefore by an interested party. Individuals or entities whose property or economic interests may be adversely impacted by ESA actions should have standing as parties in ESA litigation and should have "applicant" status in Section 7 consultations.

The Act should 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. An administrative process to down-list and delist species should be automatically triggered when the quantitative goals and targets of a recovery plan are met. The Secretary should be given the flexibility to down-list or delist species along state geographic boundaries, when recovery goals within a state or regional recovery program consistent with the purposes of the ESA have been met.

Finally, ESA funding at the federal and state levels must increase significantly to address the growing list of threatened and endangered species. Existing levels of expenditures to meet the need to protect species and their habitat are inadequate, particularly as state and federal

agencies increasingly assume ESA management activities and embrace ecosystem management strategies. Inadequate funding remains a tremendous impediment to the ESA and is the direct cause of burdens being unfairly placed on local communities and owners of private property.

Position Statement --- *Clean Water Act* --- (Resolution 2008-2)

The issue addressed in item 3 of the “NPDES Permits” section of Resolution 2008-2 is exemplified by the decision of the United States Supreme Court in South Florida Water Management District vs. Miccosukee Tribe of Indians, where the Supreme Court held that a point source need not be the original source of a pollutant as long as it conveys the pollutant to waters of the United States. It is further reflected in the decision of the U.S. Court of Appeals for the 2nd Circuit in City of New York vs. Catskill Mountains Chapter of Trout Unlimited. Both of these cases involve the transfer of water from one water body to another without altering the transported water in any way.

Numerous national and regional groups, including numerous Western states and their agencies, have supported the South Florida Water Management District and the City of New York, whose authority concerning water conveyance is being challenged. The U.S. Congress and the Supreme Court have supported the rights of states in matters of state water allocation and use, including transfers for beneficial consumptive use. In addition, EPA has proposed a rule stating that water transfers – that is, activities that convey or connect navigable waters without subjecting the water to intervening industrial, municipal or commercial use – are not subject to NPDES permitting requirements under the CWA. The negative economic and social implications of imposing an NPDES permit on these transfers could be enormous and could be extremely disruptive to the tens of millions of Western residents who depend upon the extensive water infrastructure conveying water resources across the vast distances of the West.

Position Statement --- *Reclamation* --- (Resolution No. 2008-3)

Inadequate precipitation in the American West required settlers to apply irrigation water for agriculture to succeed. As demand for water increased, Westerners sought Federal Government investment and assistance with water storage and irrigation projects, recognizing similar Congressional investments for roads, river navigation, harbors, canals and railroads. The irrigation movement demonstrated its strength when pro-irrigation planks found their way into both Democratic and Republican political platforms in 1900. Congress responded to these expressions of need with the passage of the Reclamation Act of June 17, 1902. The Act required that water users repay construction costs for projects from which they received benefits.

Reclamation’s projects and the water provided on an annual basis are of critical importance to the Western States. The Reclamation program has been a prominent part of western U.S. development and Reclamation operates about 180 projects in the 17 Western States. The total Reclamation investment in completed facilities exceeds \$12 billion and these completed works provide agricultural, municipal and industrial water to about one-third of the American West’s population. Over 9 million acres are irrigated with water supplied in whole or in part by Bureau of Reclamation projects. Reclamation is a major American generator of electricity through the operation of 56 hydropower plants associated with its projects. In the

West, water infrastructure is every bit as important as transportation infrastructure. It is essential to the continued economic growth and development of the region.

Given the huge investment made by the Federal Government and the involved water users; the critical, life-sustaining importance of the water resources managed by the Reclamation projects; and the water supply challenges being faced in the West (the most rapidly growing portion of the United States), it is essential that Reclamation adequately and properly attend to its water user constituency and responsibly discharge its fiduciary and resource management responsibilities. The enormous financial investment in these critically important water projects must be protected through adequate annual maintenance and rehabilitation expenditures. As these projects were constructed over the past 100 years, adequate and timely annual financial investment must be made to offset the effects of age and deterioration of the concrete and steel infrastructure in these projects. Deferring adequate maintenance, rehabilitation and updating activities will ultimately lead to increased future expenditures and may lead to loss of life and property and necessitate dealing with emergency circumstances. Sound public policy demands adequate federal maintenance and rehabilitation expenditures in recognition of the absolute necessity and enormous dependence on Reclamation projects to provide adequate and reliable water supply in the arid West.

One of the biggest problems facing water districts today is the timely rehabilitation of existing infrastructure. As existing facilities and infrastructure continue to age, many districts are increasingly faced with rehabilitation costs that far exceed their ability to repay under current regulations. We believe it is imperative that the Bureau of Reclamation and Congress address this growing problem before it becomes a crisis situation. Water users are simply looking for a program that will allow them to accomplish much needed rehabilitation work and repay the costs over a reasonable period of time.

Position Statement --- *Colorado River Salinity Control* --- (Resolution 2008-4)

The Colorado River provides important water supplies for about 27 million Americans in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Nearly 4 million acres are irrigated in the United States. The Colorado River also serves about 2.3 million people and half a million acres of irrigated farmlands in the Republic of Mexico. The Colorado River Basin Salinity Control Act (CRBSCA) (PL 93-320) 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.

The seven 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' abilities to develop their apportioned water supplies necessitates maintenance of the Basin-wide water quality standards for salinity. At current salinity levels, the economic damages from high salinity currently experienced by municipal, industrial and agricultural users of Colorado River water in the U.S. are estimated to be \$330 million per year.

In 1974, Congress enacted the CRBSCA to implement the 1973 salinity agreement with Mexico as well as a program for controlling Colorado River salinity levels within the United States in accordance with the Basin-wide water quality standards for salinity. In 1984, PL 93-320 was amended to authorize a new voluntary, cost-shared, on-farm salinity control program by the Department of Agriculture and to develop a comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management. 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 (EQIP) by the Federal Agriculture Reform and Improvement Act (PL 104-127). In 2000, PL 106-459 amended the Colorado River Basin Salinity Control Act to increase the appropriation ceiling for the Bureau of Reclamation's programmatic authority by \$100 million. In 2002, Public Law 107-171 reauthorized EQIP under which the Secretary of Agriculture carries out salinity control measures.

Pursuant to the Colorado River Basin Salinity Control Act, repayment to the Federal Treasury has been made from the Upper Colorado River Basin Fund (with Colorado River Storage Project hydropower revenues being the source of Basin Fund monies) and the Lower Colorado River Basin Development Fund for the majority of the Bureau of Reclamation and Department of Agriculture (USDA) salinity control program expenditures. Since 1996, upfront cost-sharing, allowing additional leveraging of Upper and Lower Basin funds with appropriated and EQIP funds to accomplish additional salinity control measures, has been occurring as authorized by the CRBSCA amendments. In addition, farmers participating in the USDA 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 (EQIP) of PL 104-127, the Department of Agriculture should take all necessary steps to ensure that salinity control proposals receive adequate funding under EQIP. The Administration must request and Congress must appropriate sufficient funding for the Colorado River Basin Salinity Control Program to the Bureau of Reclamation and to the Bureau of Land Management.

**Position Statement --- *Settlement of Indian Reserved Rights* ---
(Resolution No. 2008-5)**

Indian water right claims based on "reserved water rights" for federal reservations are established under the "Winters Doctrine." Water rights adjudication is the process by which states give water usage rights to local individuals and entities. This often involves making decisions about how to distribute water amongst competitive and conflicting claims. In general, Indian Tribes have not been adjudicated sufficient water rights to fulfill treaty responsibilities. Efforts to establish more equitable Indian water rights will only be successful when the federal government is actively involved. Financial resources must be actually appropriated in a timely manner to implement these settlements. Where the water will come from to fill these new rights continues to be the subject of much debate.

**Position Statement --- *Uranium Mill Tailings Pile near Moab, Utah* ---
(Resolution No. 2008-6)**

The Colorado River provides important water supplies for about 27 million Americans in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Nearly 4 million acres of farmland are irrigated in the United States. The Colorado River also supplies water to about 2.3 million people and 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 a strategy preferable to treatment by downstream users.

The 11.9 million ton pile (covering 130 acres; 94 feet high) of uranium mill tailings (located 750 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 at an estimated rate of 20 gallons per minute. This groundwater is seeping into the Colorado River.

Public Law 106-398 enacted by Congress in October 2000 directed Department of Energy (DOE) to prepare a plan for remediation, including groundwater restoration, of the Moab site and to commence remedial action at the Moab site as soon as practicable after the completion of the plan. Subject to the availability of appropriations for this purpose, DOE was directed to conduct remediation at the Moab site in a safe and environmentally sound manner, including groundwater restoration; and to remove, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site away from the floodplain of the Colorado River.

In November 2001, the Department of Energy (DOE) took possession of the Atlas uranium mill tailings site from the Nuclear Regulatory Commission. In April 2005, DOE announced its decision to move the Moab tailings pile to Crescent Junction located 30 miles north of Moab and 15 miles east of Green River. The DOE signed a Record of Decision on September 14, 2005 specifying DOE will move the uranium mill tailings and other contaminated material to the Crescent Junction site and implement active groundwater remediation at the site. In June 2007, the DOE announced the awarding of a contract for design and installation of a tailings-removal waste handling system, initial tailings movement and operations to relocate the Moab tailings and associated wastes to the Crescent Junction site. The CRWUA supports Congressional appropriations to accomplish the relocation of the mill tailings pile as soon as practical.

Position Statement --- *Colorado River Delta* --- (Resolution No. 2008-7)

There has been much discussion in recent years about the enhancement and restoration of riparian habitat in the Lower Colorado River Delta located in Mexico. Some have suggested that a portion of the Colorado River water supply be committed to that purpose. The U.S. government has stated repeatedly that the 1944 Mexican Water Treaty allocations will not be revisited and there will be no reallocation of water from the United States to Mexico.

The Colorado River Basin States and their water users have consistently worked with the United States, particularly through the International Boundary and Water Commission and the

Republic of Mexico, to address issues of mutual concern. The Basin states have pledged their continuing cooperation and expressed their desire to be active participants with the federal government in addressing Colorado River Delta matters. It is critical however, in addressing the Colorado River Delta that there be strict adherence to the Law of the River upon which the Basin states and their water users rely for certainty and predictability. Under the Law of the River, the waters of the Colorado River have been fully appropriated and include water for all needs in Mexico. In addressing any new water needs in Mexico, whether for potential environmental mitigation or for growing domestic uses, it must first be acknowledged that the River is already fully appropriated. As a result, any alternatives to assist Mexico will require innovative solutions involving conservation, improved water management and non-water related actions.

Efforts to improve the environment in the Colorado River Delta will require study and clearly articulated and agreed upon habitat, species, and environmental goals. Therefore, the CRWUA supports the establishment by the two countries of a common database on the laws and institutions of both countries, the operation and management of existing water delivery systems, hydrologic conditions, and the status of species and habitat in the Delta. Development of this collective information will enhance the technical analysis as well as further the cooperative and joint efforts of the two countries. It is critical that the international cooperation that has existed between the two countries regarding the Colorado River continue and include participation by the Basin States.

**Position Statement --- *Use and Maintenance of Water Supply Facilities* ---
(Resolution No. 2008-8)**

The United States owns enormous and costly water supply infrastructure in the West. This investment by the people of the United States should be used to the maximum extent possible to benefit the nation. Additional water storage capacity in the western United States is essential to meeting the growing demand for water in the West. The West continues to experience an incredible rate of growth. Nine of the ten fastest growing cities are in the West; yet, over the past thirty years the development of new significant storage capacity has been minimal.

In addition, water transfers will continue to play an important and vital role in meeting water supply deficiencies. The federally constructed water infrastructure within the Colorado River Basin provides many opportunities for meeting water supply challenges. The Colorado River Water Users Association urges the Department of the Interior and Bureau of Reclamation to exercise their maximum legal authority to facilitate appropriate water supply and water transfer projects within existing federal and state laws.

**Position Statement --- *The Department of the Interior's Water 2025 Initiative* ---
(Resolution No. 2008-9)**

On May 2, 2003, the Department of the Interior (DOI) announced a new initiative known as "Water 2025: Preventing Crises and Conflict in the West." This plan called for concentrating existing federal financial and technical resources in key western watersheds and in critical research and development to help predict, prevent and alleviate water supply conflicts. The Water 2025 Initiative has two purposes: providing a basis for public discussion of the realities

that face the West so that decisions can be made at the appropriate level in advance of water supply crises; and setting forth a framework to identify problems, solutions and a plan of action to focus the conversation as the DOI works with states, tribes, local government and the private sector to meet water supply challenges.

In announcing this initiative, the Secretary of the Interior emphasized that crisis management is not an effective solution for addressing long-term, systematic water supply problems and that ongoing water crises in the West demonstrate the consequences of failing to strategically address the problem of competing demands for a finite water supply. The DOI further recognizes that states, tribes, and local governments should have a leading role in meeting these challenges; accordingly the Water 2025 Initiative proposes focusing attention and resources on areas where scarce federal dollars can provide the greatest benefits to the West and the nation. The CRWUA supports federal investments through the Water 2025 initiative to increase available water supplies in critical areas of the Basin. Funding should continue to be provided for research and development to provide more affordable desalination water treatment technologies and for collaborative approaches, including market-based transfers and water banks, to meet emerging needs so as to avoid critical water supply crises within the Colorado River Basin.

Position Statement --- *Maintaining Financial Stability of the Upper Colorado River Basin Development Fund* --- (Resolution No. 2008-10)

The federal CRSP hydropower and delivery systems were authorized by Congress to provide a wide range of significant benefits to millions of citizens in the West, including:

- Flood Control
- Irrigation
- Municipal water supply
- Interstate and international compact water deliveries
- Lake and stream recreation
- Blue ribbon trout fisheries
- River regulation
- Economic development
- Fish and wildlife propagation and mitigation
- Power generation and transmission

Funding for repayment of federal investment in the CRSP storage features and participating irrigation projects, and the operation and maintenance of the CRSP facilities and staff of the U.S. Bureau of Reclamation (USBR) and the Western Area Power Administration (Western) is provided through power revenues maintained in the Upper Colorado River Basin Fund. A portion of the costs associated with the Colorado River Salinity Control Program, the Glen Canyon Adaptive Management Program and the Upper Basin Endangered Fish Recovery Programs are funded through the Upper Colorado River Basin Fund.

A combination of reduced generation from the CRSP, costs associated with environmental programs and experiments, and wholesale power market conditions have resulted in unstable, non-sustainable cash flow conditions in the Upper Colorado River Basin Fund. The effective CRSP power rate is increasing while resource deliveries are declining.

Once hydrologic conditions improve after the continuing severe multi-year drought plaguing the Colorado River Basin and most of the western United States since 2000, the Bureau of Reclamation should do its utmost to build reservoir conservation storage back to pre-drought conditions in each of the reservoirs which it manages.

**Position Statement --- *Management of Lower Colorado River Water Supplies* ---
(Resolution No. 2008-11)**

The efficiency of a water system is largely dependent upon the ability of the operators to manage water on a real-time basis. Additional regulating capacity is needed to optimize beneficial use of Colorado River water in the United States. The Governors' representatives of the seven Colorado River Basin states for Colorado River operations have concluded that additional off-stream regulatory storage near the All-American Canal and removal of sediment from the Colorado River behind Laguna Dam (to increase its in-stream regulatory storage capability) are needed to reduce reservoir system storage drawdown of up to 200,000 acre-feet of water annually beyond our Nation's commitments to the Republic of Mexico. In addition, each year that passes without the Yuma Desalting Plant being operated reduces the amount of water stored in the Colorado River reservoir system by approximately 100,000 acre-feet, thereby increasing the risk of water supply shortages to the Basin States. Timely action is critical as the continuing multi-year drought in the Colorado River Basin has resulted in tremendous storage reductions in Lake Powell and Lake Mead, unarguably demonstrating the need for additional management actions to conserve reservoir storage.

Improving Capacity to Regulate Flows Released from Parker Dam

Water released from Parker Dam takes three days to travel the 143 miles to Imperial Dam, at which point diversions from the River are the greatest and the ability to regulate flows is the least. Unanticipated changes in weather conditions, water use orders, and flow into the River can significantly affect Reclamation's ability to deliver the water ordered by Arizona and California entities and regulate the River. The limited storage capacity available downstream of Lake Havasu is located principally in Senator Wash Reservoir, operated by Reclamation. This reservoir has a usable storage capacity of over 12,000 acre-feet when full at elevation 251 feet.

However, operation restrictions put in place due to dam safety concerns in 1992 prevent raising the reservoir's water surface elevation above 240 feet. These reservoir operating restrictions preventing the use of nearly 5,000 acre-feet of storage space make it much more difficult to regulate the flow of water arriving at Imperial Dam.

The Bureau of Reclamation has completed a multi-phased study quantifying the need and options for regulatory storage to improve Colorado River management downstream of Parker Dam. Reclamation concluded that locating a water management reservoir near the All-American Canal, near Drop 2 east of the Imperial Valley, with a capacity of up to 10,000 acre-feet, would greatly benefit the Colorado River Basin States. These benefits include conserving reservoir system storage, improving river regulation and water delivery scheduling, providing opportunities for water conservation, storage and conjunctive use programs, and setting the stage for new cooperative water supply and water quality management endeavors with Mexico.

While activities on a reservoir near the All-American Canal proceed, there is an immediate need to restore the limited regulatory storage capacity. This can be partly accomplished by excavating sediments that have accumulated behind Laguna Dam since its completion in 1909. In addition to enhancing the ability to regulate flows arriving at Imperial Dam, it would capture and re-regulate the water periodically released for the proper operation of Imperial Dam, benefiting both the Basin States and Mexico. Habitat restoration and enhancement within this project area may be implemented under the Lower Colorado River Multi-Species Conservation Program. The LCR MSCP Final Biological Assessment indicated that the project included a habitat restoration element designed to benefit riparian and aquatic species. The habitat restoration elements of the project could create wetlands and riparian habitat in or parallel to the excavated channel.

Yuma Desalting Plant

The United States is currently bypassing an average of more than 100,000 acre-feet of drainage every year from the Wellton-Mohawk Irrigation and Drainage District to Mexico without charge against Mexico's entitlement to Colorado River water under the 1944 Treaty with Mexico. The United States is required, as a national obligation under the Colorado River Basin Salinity Control Act, to replace these bypassed flows and thereby conserve Colorado River water for use in the United States. The Colorado River Basin Salinity Control Act identified the Yuma Desalting Plant (YDP) as the only feasible method for treating the Wellton-Mohawk drainage water so that it could be discharged to the Colorado River and charged against Mexico's treaty entitlement. Operating the YDP would reduce the annual Colorado River reservoir system drawdown by approximately 100,000 acre-feet, thereby directly reducing the risk of water supply shortages to the Basin States.

Position Statement --- *Augmentation of Colorado River Water Supplies* --- (Resolution 2007-12)

The Seven Colorado River Basin States' April 23, 2007 Agreement Concerning Colorado River Management and Operations commit the parties to the agreement to:

“... diligently pursue interim water supplies, system augmentation, system efficiency and water enhancement projects within the Colorado River System. The term ‘system augmentation’ includes the quantifiable addition of new sources to the Colorado River Basin, including importation from outside the Basin or desalination of ocean water or brackish water ... The term ‘water enhancement’ includes projects that may increase available system water, including cloud seeding and non-native vegetation management. Due to the critical importance of implementing these projects in reducing the potential for shortages, the Parties shall continue to jointly pursue the study and implementation of such projects, and to regularly consult on the progress of such projects.”

In their letter of April 30, 2007 to the Secretary of the Interior, providing the Basin States’ comments on the draft environmental impact statement on Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (DEIS), the Basin States wrote:

“Implementation of projects to augment the long-term supply of the Colorado River is of utmost importance not only to the Basin States and the millions of people who live here, but to the nation as a whole. While no specific augmentation projects are included in the current Basin States’ Proposal, the need to develop a process to implement augmentation projects must remain at the forefront of the Basin States’ and Interior’s agendas. Changes to existing or new federal regulations may be necessary to effectuate augmentation projects.

The Preliminary Proposal outlined a concept for water users in Arizona, California, or Nevada to secure additional water supplies by funding the development of a non-Colorado River System water supply in one Lower Division State for use in another Lower Division State by exchange. Through the cooperation of the International Boundary and Water Commission, United States and Mexico, similar arrangements could be established by which non-Colorado River System water supplies in Mexico could be developed for use in the United States by exchange.

The Basin States view the inclusion in the DEIS of a quantitative analysis of the impacts to the Colorado River resulting from the implementation of future augmentation projects as a positive step and encourage you to include the same analysis in the FEIS in order to begin to establish the environmental compliance framework for future augmentation projects.”

The CRWUA fully supports the Basin States’ proposal to accomplish a significant amount of water supply increase (e.g., augmentation) in the Colorado River Basin.

Position Statement --- *Potential Climate Change* --- (Resolution No. 2008-13)

The potential for climate change is a matter of considerable public discussion. The possible causes and impacts are the subject of heated debate. It is clear, however, that many scientists assert that climate change will continue to affect global temperatures, sea levels and precipitation patterns. For purposes of water resource management decisions, it is unnecessary to directly address or attempt to resolve issues relating to the relative contributions of human activities and natural causes to climate change and potential actions to alter those effects. It is, however, appropriate to take into account the possibility that climate change could affect patterns of precipitation, snowpack, runoff and related water resource factors in the Colorado River Basin. In order to minimize any potential deleterious effects of reduced or altered water supplies resulting from 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 implement increased system redundancy and capabilities to reliably provide water supplies to areas of critical demand, in accordance with applicable law.

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