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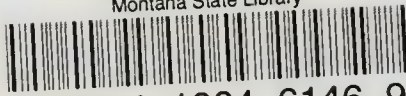
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OF THE
WESTERN STATES
WATER COUNCIL

Twentieth Annual Report



THE WHITE HOUSE
WASHINGTON

April 5, 1985

I am pleased to join the members, past members and friends of the Western States Water Council in marking the Council's 20th anniversary.

Virtually from the outset of your organization, I expressed the conviction that cooperation among the states was the best way to achieve optimum use of water resources in the West. States are primarily responsible for the management, regulation and development of water resources. A federal interest in western water resources remains, but here too cooperation is the key.

For twenty years the Western States Water Council has successfully pursued its goal of effective cooperation among the participating states. It has devised programs for integrated development of water resources by state, federal and other agencies. I heartily pledge the full support of my Administration for the Council as an effective instrument of state initiative and state-federal cooperation.

Ronald Reagan

1985 ANNUAL REPORT of the WESTERN STATES WATER COUNCIL

INTRODUCTION

The first official meeting of the Western States Water Council was held on August 3, 1965, at Stateline (Lake Tahoe) Nevada. The Twentieth Anniversary of the Council was celebrated at a luncheon held on April 11, 1985, in conjunction with the regular quarterly meetings in Reno, Nevada. Several past members attended and draft copies of a history of the formative years of the Council, prepared by the staff, were distributed. Steve Reynolds and Thorpe Waddingham were recognized as charter members. Nevada Governor Richard Bryan was a special guest speaker and several past Council chairmen spoke briefly, including: Freeman Holmer (1965-66); Raphael J. Moses (1966-69); William R. Gianelli (1971-73); Wesley E. Steiner (1975-77); Daniel F. Lawrence (1980-81); and Ray Rigby (1982-83). Their remarks covered many past Council achievements.

President Reagan's letter commemorating the Council's twentieth anniversary (on the opposite page) was particularly appropriate in light of his strong support for the Council while Governor of California. Not long after the Council was organized, Governor Reagan wrote Governor John Love of Colorado about his vision of the Council's potential.

My Dear Governor:

I am impressed with the need for the states of the West to look beyond sectional interests and to approach water resources development on a regional basis. Few endeavors offer more challenge to the states of the West and greater potential for lasting benefit. Unless we are successful, lack of water will soon limit development throughout much of the West.

I am convinced that the best approach to westwide regional planning is through cooperative state action. I see no need, certainly at this time, for the states to look to Washington to act as a broker in this endeavor.

The Western Governors' Conference approved the creation of the Western States Water Council during meetings on June 10-13, 1965, in Portland, Oregon. The Governors' resolution explicitly stated: "The future growth and prosperity of the western states depend upon the availability of adequate quantities of water of suitable quality." Further, they strongly felt that a fair appraisal of future water needs, and the most equitable means of meeting such needs, demanded a regional effort. Water availability and interbasin transfers of water were important issues. Western states found themselves in an era of rapid federal water resources development and regional or basinwide planning, without a direct unified state voice in the use of their water resources. The Western States Water Council has since provided such a voice on behalf of western governors on water policy issues.

The emphasis and focus of the Western States Water Council has changed over the years as different water policy problems have evolved. However, the commitment towards reaching a regional consensus on issues of mutual concern

has continued. The Council has proven to be a dynamic, flexible institution providing a forum for the free discussion and consideration of many water policies which are vital to the future welfare of the West. As envisioned by the Western Governors' Conference, it has succeeded as a continuing body, serving the governors in an expert advisory capacity.

The Rules of Organization state: "The purpose of the Western States Water Council shall be to accomplish effective cooperation among western states in planning for programs leading to integrated development of their water resources by state, federal and other agencies." For twenty years, the Western States Water Council has served western governors in developing a regional consensus of westwide water policy and planning initiatives, particularly federal initiatives. The Council strives to protect western states' water interests, while at the same time serving to coordinate and facilitate western water planning and management efforts.

Originally, Council membership consisted of the States of **ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON** and **WYOMING**. In 1978, **TEXAS** was admitted to membership, and **ALASKA** requested and received membership in 1984. **NORTH DAKOTA** and **SOUTH DAKOTA** are currently "associate members," which is a temporary status approved by amendment of the Council's Rules of Organization in 1983. Membership is open to all member states of the Western Governors' Association, the successor to the Western Governors' Conference, which also includes the States of **Hawaii** and **Nebraska**.

Each member Governor serves on the Council in an ex-officio capacity. He appoints three representatives from his state, and as many alternatives as he deems necessary, to serve on the Council at his pleasure. State representatives are appointed to the working committees, with one representative per state also appointed to the Executive Committee. The Executive Committee may call special Council meetings, and attends to internal Council matters with the assistance of the Management Subcommittee. The working committees are the Legal Committee, the Water Quality Committee, and the Water Resources Committee, with each mainly concerned with issues as their committee name implies. Each working committee is directed by a committee chairman and vice-chairman. Committee chairmen, in turn, name special subcommittees and designate subcommittee chairmen to study issues of particular concern.

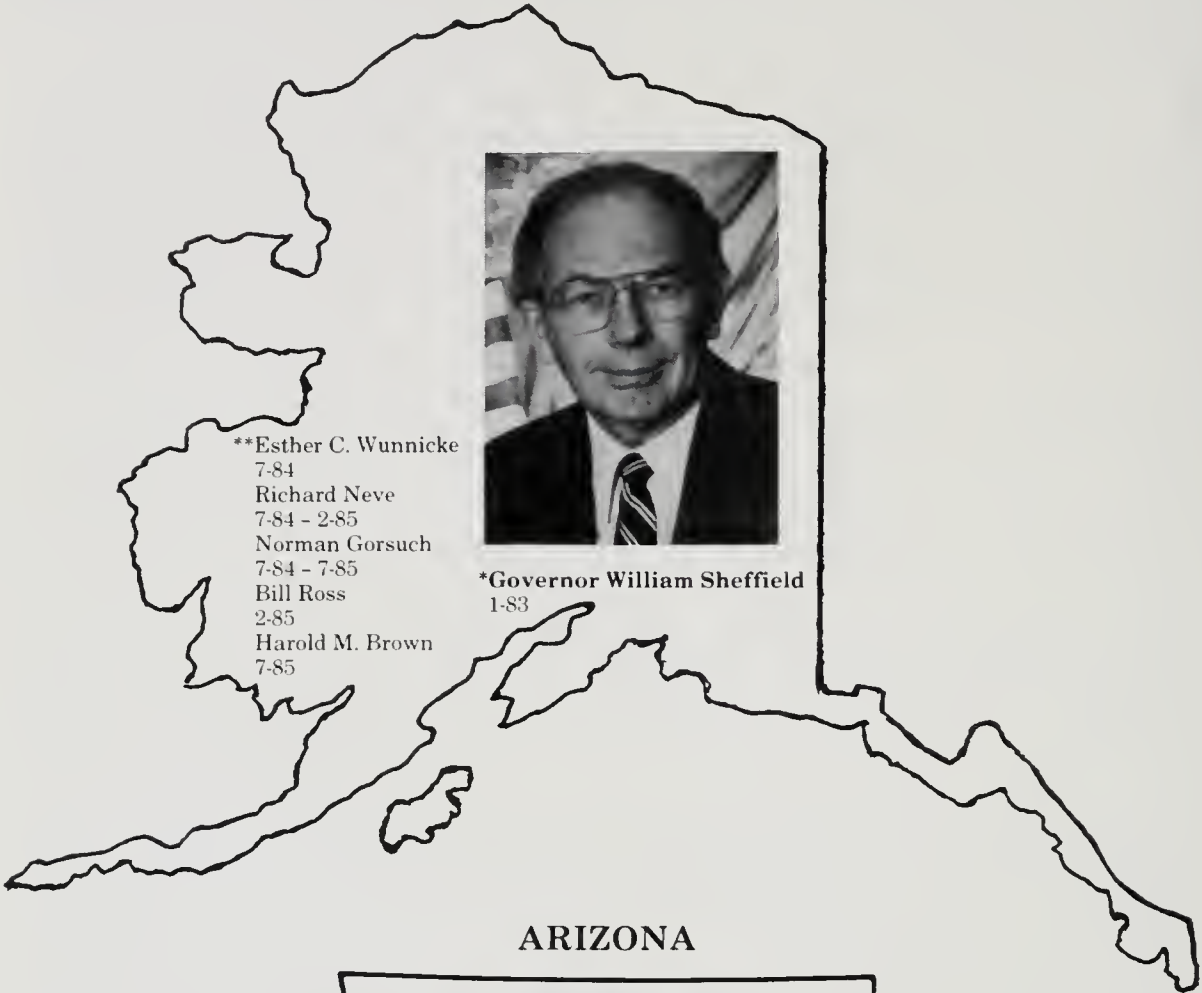
The Western States Water Council offices are in Salt Lake City, Utah. The staff is headed by D. Craig Bell, Executive Director. Working with Mr. Bell are: Tony Willardson, Associate Director; Norman K. Johnson, Legal Counsel; and a secretarial staff including Pearl Pollick, Marjorie Farmer, and Myrna Shuey.

Positions taken and resolutions passed at the quarterly meetings of the Council appear in this report. Meetings are held on a rotation basis, in the member states, with state representatives acting as hosts to the other Council members and guests. In 1985, meetings were held in: San Diego, California - January 10-11; Reno, Nevada - April 10-12; Anchorage, Alaska - July 18-19; and Spokane, Washington - October 10-11. Guests are welcome. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. Information regarding future meeting locations and agenda items can be obtained by writing or calling the Council office.

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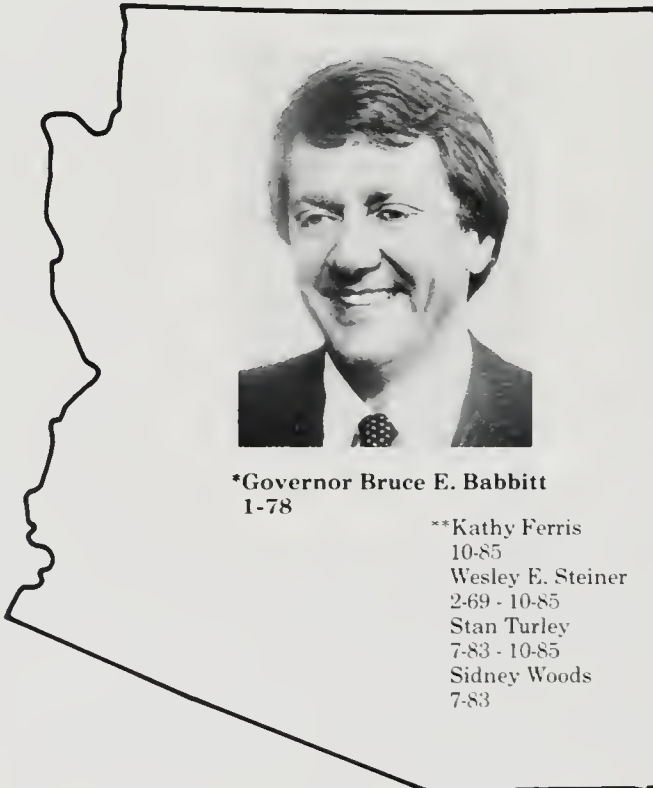
1985
**WESTERN STATES WATER COUNCIL
 MEMBERSHIP**
ALASKA



****Esther C. Wunnicke**
 7-84
 Richard Neve
 7-84 - 2-85
 Norman Gorsuch
 7-84 - 7-85
 Bill Ross
 2-85
 Harold M. Brown
 7-85

***Governor William Sheffield**
 1-83

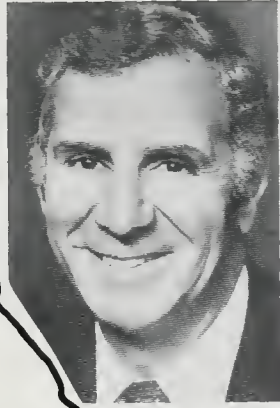
ARIZONA



***Governor Bruce E. Babbitt**
 1-78

****Kathy Ferris**
 10-85
 Wesley E. Steiner
 2-69 - 10-85
 Stan Turley
 7-83 - 10-85
 Sidney Woods
 7-83

CALIFORNIA



***Governor
George Deukmejian**

1-83

**David Kennedy
10-83
Senator Ruben Ayala
7-84
David G. Kelley (Alt.)
7-84

COLORADO



***Governor Richard D. Lamm**
1-75

**David H. Getches
12-83
J. William McDonald
10-79
Gary Broetzman
9-80
Jeris Danielson (Alt.)
4-80
Wendy C. Weiss (Alt.)
10-84

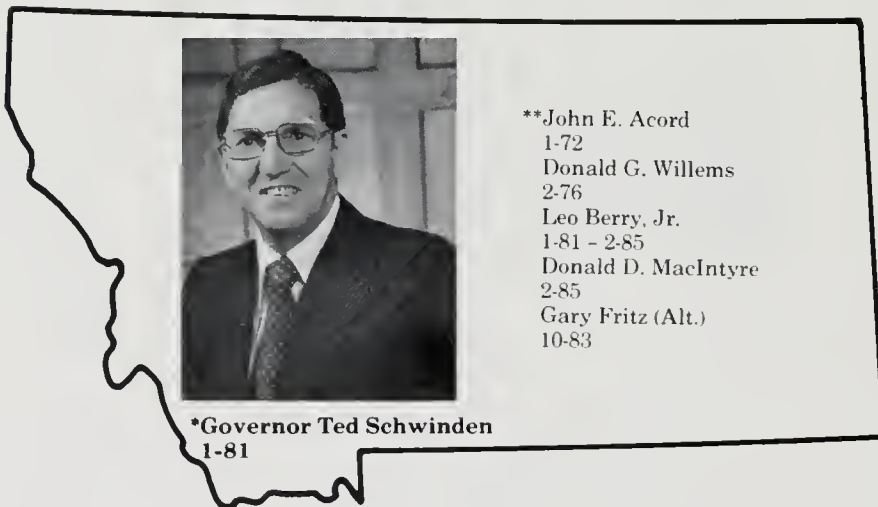
IDAHO



****A. Kenneth Dunn**
5-77
Ray Rigby
2-73
Gene Gray
10-83
Wayne Hass (Alt.)
10-83
Lee Stokes (Alt.)
10-83

***Governor John V. Evans**
1-77

MONTANA



****John E. Acord**
1-72
Donald G. Willems
2-76
Leo Berry, Jr.
1-81 - 2-85
Donald D. MacIntyre
2-85
Gary Fritz (Alt.)
10-83

***Governor Ted Schwinden**
1-81

NEVADA



***Governor Richard Bryan**
1-83

****Roland D. Westergard**
5-68
Joseph E. Dini, Jr.
7-83
Jack L. Stonehocker
9-83

NEW MEXICO



***Governor Toney Anaya**
1-83

****S. E. Reynolds**
6-65
Brant Calkin
2-84 — 1-85
Charles DuMars
2-84
Denise Fort
1-85

OREGON



***Governor Victor Atiyeh**
1-79

****William H. Young**
3-79
George Proctor
3-79
Kip Lombard
1-83

TEXAS



***Governor Mark White**
1-83

****John T. Montford**
10-83
Charles E. Nemir
10-78
Fred Pfeiffer
10-83

UTAH



***Governor Norman H. Bangerter**
1-85

**Dee C. Hansen
3-85
Thorpe A. Waddingham
6-55
Harry D. Pugsley
6-65 - 3-85
Daniel F. Lawrence
5-68 - 3-85
D. Larry Anderson
3-85
Dallin Jensen (Alt.)
7-71
Calvin Sudweeks (Alt.)
3-79

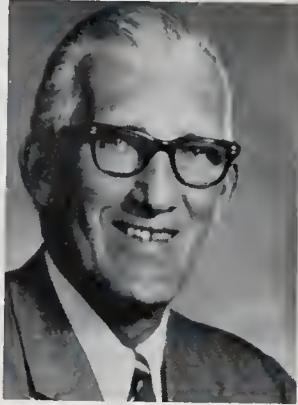
WASHINGTON



***Governor Booth Gardner**
1-85

**Andrea Beatty Riniker
2-85
Donald W. Moos
4-81 - 2-85
Charles B. Roe, Jr.
4-70
Glen Fiedler
7-84
Wilbur G. Hallauer (Alt.)
4-77

WYOMING



***Governor Ed Herschler**
1-75

****George L. Christopulos**
4-75
Willard C. Rhoads
3-67
Warren White
3-83

*Ex-Officio Member
**Executive Committee Member

COUNCIL MEMBERS

At Spokane, Washington, Meeting October 1985



Back Row:

Middle Row:

Front Row:

Not Pictured:

Wayne Haas, George Christopoulos, Wes Steiner, Mike Melton (visitor)

Ruben Ayala, John E. Accord, D. Larry Anderson, Dee C. Hansen, Don Willems, William H. Young, Kip Lombard, Glen Fiedler, Tom Hawkins (for Esther Wunnicke)

Charles B. Roe, Jr., Charles E. Nemir, A. Kenneth Dunn, Fred Pfeiffer, David Kennedy, Kathy Ferris, Cal Sudweeks, Gary Broetzman, Jack Stonehocker

Esther Wunnicke, Bill Ross, Hal M. Brown, Sidney Woods, David G. Kelley, David H. Getches, J. William McDonald, Jeris Danielson, Wendy C. Weiss, Ray Rigby, Gene Gray, Lee Stokes, Donald D. MacIntyre, Gary Fritz, Roland D. Westergard, Joseph E. Dini, Jr., S.E. Reynolds, Charles DuMars, Denise Fort, George Proctor, John T. Montford, Thorpe A. Waddingham, Dallin Jensen, Andrea Beatty Riniker, Wilbur G. Hallauer, Warren G. White, Willard Rhoads

PRESENT AND PAST OFFICERS AND EXECUTIVE DIRECTORS

CHAIRMAN	VICE-CHAIRMAN	SECRETARY/TREASURER
John E. Acord 7-84	J. William McDonald 7-84	Roland D. Westergard 7-80

Since its inception in 1965 the following individuals have served as Council officers:

As Chairman:	Freeman Holmer	- Oregon	8/65 to 10/66
	Raphael J. Moses	- Colorado	12/66 to 7/69
	William S. Holden	- Idaho	7/69 to 3/71
	William R. Gianelli	- California	7/71 to 7/73
	William A. Groff	- Montana	7/73 to 7/75
	Wesley E. Steiner	- Arizona	7/75 to 7/77
	Chris L. Wheeler	- Oregon	7/77 to 7/78
	Donald L. Paff	- Nevada	7/78 to 7/79
	George Christopoulos	- Wyoming	7/79 to 7/80
	Daniel F. Lawrence	- Utah	7/80 to 7/81
	Charles Nemir	- Texas	7/81 to 7/82
	Ray W. Rigby	- Idaho	7/82 to 7/83
	John Spencer	- Washington	7/83 to 7/84
	John E. Acord	- Montana	7/84
As Vice Chairman:	Raphael J. Moses	- Colorado	8/65 to 12/66
	William S. Holden	- Idaho	12/66 to 10/68
	William R. Gianelli	- California	7/69 to 7/71
	William A. Groff	- Montana	7/71 to 7/73
	Wesley E. Steiner	- Arizona	7/73 to 7/75
	Chris L. Wheeler	- Oregon	7/75 to 7/77
	Donald L. Paff	- Nevada	7/77 to 7/78
	George Christopoulos	- Wyoming	7/78 to 7/79
	Daniel F. Lawrence	- Utah	7/79 to 7/80
	Charles E. Nemir	- Texas	7/80 to 7/81
	Ray W. Rigby	- Idaho	7/81 to 7/82
	John Spencer	- Washington	7/82 to 7/83
	John E. Acord	- Montana	7/83 to 7/84
	J. William McDonald	- Colorado	7/84
As Secretary-Treasurer:	Donel J. Lane	- Oregon	8/65 to 4/70
	Floyd A. Bishop	- Wyoming	4/70 to 7/73
	Daniel F. Lawrence	- Utah	7/73 to 7/79
	Charles E. Nemir	- Texas	7/79 to 7/80
	Roland D. Westergard	- Nevada	7/80

The following have served as Executive Director:

Wright Hiatt	2/66 to 7/67
Jay R. Bingham	3/68 to 12/69
Thomas Cahill	1/70 to 9/73
Jack A. Barnett	3/74 to 11/80
D. Craig Bell	11/80

MANAGEMENT SUBCOMMITTEE MEMBERS



Roland Westergard, Secretary/Treasurer; Bill McDonald, Vice-Chairman; John E. Acord, Chairman; D. Craig Bell, Executive Director; Ray Rigby, Past Chairman

STAFF

D. Craig Bell Executive Director
Anthony G. Willardson Associate Director
Norman K. Johnson Legal Counsel
Pearl O. Pollick Office Manager
Marjorie D. Farmer Secretary
Myrna K. Shuey Report Secretary



Back Row: Norman K. Johnson, D. Craig Bell, Tony Willardson
Front Row: Pearl Pollick, Marjorie Farmer, Myrna Shuey

Council Offices are located at:

**220 South 2nd East, Suite 200
Chancellor Building
Salt Lake City, Utah 84111
(801) 521-2800**

QUARTERLY MEETINGS

Seventy-Seventh Quarterly Meetings

January 9-11, 1985
San Diego, California

The Seventy-Seventh Quarterly Meetings of the Western States Water Council were held in San Diego, California, on January 9-11. Mr. Lonnie Lebow, Special Assistant to the General Counsel, Federal Energy Regulatory Commission, addressed members on federal hydropower permitting and licensing procedures. He specifically recognized potential conflicts between the preliminary permitting procedures and the acquisition of necessary water rights under state law, but noted that the states have ultimate jurisdiction in granting water rights which a permit applicant must obtain before a final permit is issued. Mary Walker, Deputy Solicitor for the Department of Interior, addressed members on resolving Indian water rights claims and stressed the benefits of negotiated settlements over extended litigation. Professor Charles DuMars, of the University of New Mexico Law School, spoke on Sporhase v. Nebraska. He suggested that states, need to prepare detailed water plans, then appropriate and reserve water for specific public purposes, in order to insure that state control will meet constitutional challenges. Dave Kennedy, Director of the California Department of Water Resources, described the challenges of meeting California's future water needs. He reviewed past water resource development and future possibilities, in light of political realities, given the defeat by voters of the Peripheral Canal proposal.

The Water Resources Committee sponsored a panel discussion of the Galloway Group's interstate water transfer proposal to lease Upper Colorado River Basin water to San Diego, California. Larry Michaels, General Manager for the San Diego County Water Authority, described the County's future needs and its dependence on imported water. Mr. John Musick spoke for the Galloway Group and outlined the proposed project and its objectives. Council members Bill McDonald, Director of the Colorado Water Conservation Board and Wes Steiner, Director of the Arizona Department of Water Resources, raised concerns over the proposal's impact on established state agreements governing the use of Colorado River water.

The Water Quality Committee focused on amendments to the Safe Drinking Water Act and extensively discussed proposed amendments to the Clean Water Act.

Regarding ground water, the Legal Committee questioned the need for new federal legislation. However, assuming a bill may be introduced, the Committee will consider drafting legislation emphasizing the primary role of the states in managing ground water. Ray Rigby, of Idaho, next described for the Committee the complex Swan Falls settlement, which affects hydropower and future agricultural development in the Upper Snake River Basin in Idaho. Other issues discussed included reserved water rights for wilderness areas and Indian water codes.

One internal position was approved which changes the Council's "Rules of Organization" and "Principles-Standards-Guidelines." The changes in the "Rules of Organization" reflect Alaska's membership in the Council and the

open invitation to the States of Hawaii, North Dakota, South Dakota and Nebraska to join the Council. The "Principles-Standards-Guidelines" changes update the stated function of the Council. The "Standards" section (adopted in 1967) anticipated that each state would come up with a state water plan and charged the Council with coordinating those plans and maintaining a current file. This ambitious task was soon abandoned. Given other priorities, this wording has been removed and more current functions of the Council were inserted under the "Principles" section. The changes appear in this report.

Seventy-Eighth Quarterly Meetings

April 10-12, 1985

Reno, Nevada

The regular quarterly meetings began April 10. The Legal Committee considered the Swan Falls settlement, selenium pollution of Kesterson Reservoir, recent amicus briefs, and a proposal for an Indian Policy Commission. The Water Resources Committee considered and adopted a position supporting continued funding for the federal snow survey and water supply forecasting program, as well as testimony for Congress on the Endangered Species Act Reauthorization. Considerable discussion also centered on federal and state water project financing efforts. The Water Quality Committee finalized a proposed position on the reauthorization of the Clean Water Act, and discussed issues related to ground water quality and the reauthorization of the Safe Drinking Water Act.

During the Seventy-Eighth Quarterly Council Meeting on Friday, April 12, the Council approved three positions recommended by the committees. The position on the Clean Water Act amendments addresses: (1) the construction grants program; (2) the National Pollution Discharge Elimination System permit program; (3) water quality standards; (4) monitoring and enforcement; (5) pretreatment requirements; (6) non-point source pollution; (7) pollution of lakes; and (8) state administration funds. Regarding the federal snow survey program, the Council referred to the President's FY86 proposed budget reductions for the Soil Conservation Service. Given an earlier review of the snow survey program, which found no acceptable alternatives to the existing federal program, the Council stated its opposition to any phase down and urged Congress to carefully consider funding decisions for other Soil Conservation Service activities. The Council also approved testimony regarding reauthorization of the Endangered Species Act, which was later submitted by Bill McDonald, Western States Water Council Vice Chairman, during hearings before the Senate Environment and Public Works Committee on April 16. It was also submitted, for the record, to the House Merchant Marine and Fisheries Committee. The testimony describes continuing conflicts between implementation of the Act and state water resources.

Three guests addressed the council. Robert Broadbent, Assistant Secretary of Interior, spoke on the problem of selenium pollution at the Kesterson Reservoir and Wildlife Refuge in California as related to the Migratory Bird Treaty Act. He also mentioned a continuing study of a proposed Bureau of Reclamation Army Corps of Engineers merger. Next, Garry Stone, Federal Water Master for the Truckee River, spoke on the challenges of coordinating the

distribution and management of federal, state, Indian, and local Truckee River water supplies. Lastly, Ray Rigby and Jack Barnett, trustees of Water & Man, Inc., reported on the status of western water education efforts and Water & Man's current activities.

Seventy-Ninth Quarterly Meetings

**July 18-19, 1985
Anchorage, Alaska**

The Seventy-Ninth Quarterly Meetings of the Western States Water Council were held July 18-19, in Anchorage, Alaska. This was the first meeting hosted by the State of Alaska since joining the Council in 1984. On Friday, Governor Bill Sheffield welcomed Council members to Alaska. He used the opportunity to actively promote state construction of the Susitna Project, an estimated \$30 billion two-dam hydropower project on the Susitna River. Governor Sheffield noted that the State had already spent some \$150 million on studies and "enough is enough," warning that Susitna development is not an indefinite option.

Following the Governor, Anchorage Mayor Tony Knowles addressed the membership. He stated that power supply is only one issue in an area of explosive growth. The Mayor noted that Alaska's population is about 450,000. Anchorage is the largest city with around 244,000 people, and has had a population increase of about one-third in only four years. Mayor Knowles explained that in a state of apparently abundant water supplies, the City is in a dead even race with growth, trying to insure adequate supplies of potable water. He described the Eklutna Water Project briefly. Following the meeting, the municipality of Anchorage hosted a bus tour and salmon bake at Lake Eklutna.

Earl Israelsen, from Utah State University's Water Research Laboratory, reviewed establishment of an International Center for Water Education, noting publications and services available to the states.

No formal external positions were before the Council, though Gary Broetzman, Chairman of the Water Quality Committee, noted that the Executive Committee had (via a conference call) approved an emergency position outlining general principles which the Council supports with respect to reauthorization of the Safe Drinking Water Act. Both the House and the Senate passed bills in 1985, but a final conference agreement on the legislation has yet to be reached.

On the recommendation of the Nominating Subcommittee, Council Chairman John E. Acord, Vice Chairman J. William McDonald and Roland D. Westergard, Secretary/Treasurer, were unanimously reelected to serve as Council officers during 1985-86.

During the Three-Committee Informational Meeting, a panel representing Montana's Reserved Rights Compact Commission and Department of Natural Resources explained the recently negotiated Fort Peck Compact, which defines and allocates water rights of the Assiniboine and Sioux Tribes. On May 15, 1985, Governor Ted Schwinden signed Montana Senate Bill No. 467, ratifying the Compact, which the State also intends to submit for consideration to Congress. Also during the Three-Committee Meeting, David Houston, the Bureau

of Reclamation's Regional Director in Sacramento, California, reported on wildlife refuge water pollution problems and the response of the Department of the Interior.

The Water Resources Committee met with a follow-up discussion of the Fort Peck Compact and a description of Montana's new water marketing legislation. The Committee also discussed pending legislation to reauthorize the Endangered Species Act and Senate report language recognizing the creation of state/federal working groups in the Upper Colorado and Platte River Basins. Further, the Committee reviewed pending federal legislation on appropriations for new water project starts, omnibus Corps authorization legislation with new cost sharing requirements, the Small Reclamation Projects Act, and provisions in a draft public rangelands bill creating "key riparian habitat management areas."

The Water Quality Committee reviewed reauthorization of the Safe Drinking Water and Clean Water Acts, and discussed Council participation in EPA's Ground Water Liaison Group. With respect to the latter, the Committee determined that further efforts should be made to insure that the liaison group's activities provide meaningful state input to implementation of EPA's Ground Water Strategy.

The Legal Committee reviewed Montana's Fort Peck Compact, Federal Energy Regulatory Commission licensing and state water rights issues, ground water, reserved water rights issues for wilderness areas, and recent legal development in member states.

Eightieth Quarterly Meetings

October 10-11

Spokane, Washington

The Eightieth Quarterly Meetings of the Western States Water Council were held October 10-11, in Spokane, Washington. The Council approved three policy positions. The first deals with federal water pricing policies when reservoir storage is reallocated. Second, the Council supports an additional \$600M authorization under the Small Reclamation Projects Act. Third, the Council urges the Departments of Interior and Justice to take appropriate steps to dismiss or stay a United States suit, filed in federal district court in Oregon, which seeks a declaration of certain water rights for the Klamath Forest National Wildlife Refuge, pending completion of an active state general adjudication.

At the Council meeting, Edwin H. Clark, Vice President of the Conservation Foundation, spoke on the necessity of taking advantage of water conservation opportunities. He specifically referred to the increasing traditional demands on western water for industry, energy, and population growth, as well as more recent demands for Indian water rights, instream flows, recreation, and water quality. He noted the greatest obstacles appear to be institutional, particularly defining water rights, providing incentives for conservation, and balancing competing demands. Next, George Friedlander, First Vice President and Manager of Municipal Research for Smith Barney, addressed members on proposed tax reforms. He noted that recent proposals would severely restrict the availability of tax-exempt financing for many public projects.

During the Three-Committee Informational Meeting, Linda Eichmiller, Deputy Director of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), briefed members on pending water quality legislation. Next, Jo Clark and Bruce Driver spoke on the Western Governors Association's water efficiency study.

The Water Resources Committee reviewed water related provisions of the FY85 supplemental appropriations bill and the FY86 energy and water appropriations bill, as well as pending Corps omnibus authorization legislation. Bill Lloyd, the Bureau of Reclamation's Regional Director in Boise, Idaho, discussed a new ground water recharge demonstration program. Other issues discussed included U.S. Forest Service water claims for instream flows, possible changes to the Federal Power Act, establishment of a Lower Colorado River Floodway, and reauthorization of the Endangered Species Act.

The Water Quality Committee reviewed pending and proposed federal ground water legislation, EPA's Ground Water Liaison Group activities, and legislative progress and Council activities covering the Clean Water and Safe Drinking Water Acts. Also, the Committee heard a presentation from Linda Eichmiller on ASIWPCA's soon to be released non-point source pollution report.

In the Legal Committee, Robert D. Dellwo, Counsel for the Coeur D' Alene, Kalispell, and Spokane Indian Tribes, described tribal-federal relations in water resources litigation. The Legal Committee also discussed ground water issues, water right claims of the Pyramid Lake Paiute Indian Tribe in Nevada and California, Indian water codes, water issues related to the Migratory Bird Treaty Act, and various pending water cases and other legal developments.

OTHER IMPORTANT ACTIVITIES

In addition to the activities undertaken as part of the Council's regular quarterly meetings and the formal resolutions and positions adopted by the Council, several other important events occurred.

The Council cosponsored a workshop on general water right adjudications with the American Bar Association. The seminar was held January 8, 1985, in San Diego, California, in conjunction with the Council's quarterly meetings. Speakers included: Roderick E. Walston, California Deputy Attorney General; Edward W. Clyde, Clyde, Clyde, Pratt, Gibbs & Cahoon; Dave Getches, Colorado Department of Natural Resources; John Carlson and Jerome Muys, Holland & Hart; and Mary Walker, Deputy Solicitor of the Department of the Interior. Various water right related issues were discussed, including Indian reserved rights, general adjudication procedures, interstate compacts, and the application of the public trust doctrine. The seminar was part of a continuing effort by the Council to work with the American Bar Association to promote exchange of information and perspectives relative to the administration of water rights in the West. Over 100 people attended this very successful workshop.

A Congressional Water Policy Seminar on State/Federal Relations and Water Resource Management was held in conjunction with the April meetings in Reno, on April 11, 1985. The seminar was designed to provide a forum where the views of western state officials could be conveyed effectively to western congressional representatives and key federal officials. A secondary purpose was to provide information to members of the Council and others regarding important issues, with particular emphasis on highlighting the views of those directly involved with and affected by these issues. Four topics were discussed: water project financing, the Clean Water Act reauthorization, implementation of the Endangered Species Act, and ground water. The water project financing panel included: Congressman Charles Pashayan (R-CA); Acting Assistant Secretary of Army (Civil Works), Robert Dawson; Assistant Secretary of Interior for Water and Science, Robert Broadbent; Don Cluff of the Office of Management and Budget; Congressional staff members Hal Brayman, Russell Brown, and Hunter Spillan; and Council members Wesley Steiner and Charles Nemir. William Gianelli, past Assistant Secretary of Army and a former Council member, also attended and participated in a lively discussion. The Clean Water Act panel included: Peter Perez of the Environmental Protection Agency; Congressional staff members Robert Hurley and John Doyle; Linda Eichmiller of the Association of State and Interstate Water Pollution Control Administrators; and Council members William Young and Calvin Sudweeks. An afternoon panel on the Endangered Species Act included: Jack Hoffman and Harold Swafford of Bowen, Swafford, Hoffman & Test; Frank Dunkle from the U.S. Fish and Wildlife Service; Mike Morgan representing Senator Malcom Wallop; and Council member Bill McDonald. The panel on ground water protection and management included: Peter Perez; Donald Feliciano of the Environment and Natural Resources Policy Division of Library of Congress; and Council members Steve Reynolds, Gary Broetzman, Charles Roe and Don Maughan (a past member).

The Council sponsored its second annual Water Management Symposium, State Water and Wastewater Project Financing, in Seattle, Washington, on

September 5-6, 1985. Fifty state and federal water resource officials, engineering consultants, and investment banking representatives attended. Fourteen papers from ten states were presented. The luncheon speaker, Donald R. Larson, Senior Vice President for Smith Barney, Harris Upham and Company, spoke on the alarming potential negative impact of the Administration's proposed tax reforms on municipal finance. Proceedings of the symposium are available from the Council.

In addition to a Council resolution encouraging the federal government to defer to pending state water right adjudications, the Council facilitated the filing of an amicus brief in Adair v. United States which would accomplish the same result. On November 5, 1985, Alaska, Montana, Nevada, North Dakota, South Dakota, Washington, and Wyoming joined Oregon in urging the Ninth Circuit Court of Appeals to grant a petition for writ of mandamus requiring a federal district court judge to reverse his order allowing the United States to file a post-judgment amended complaint. The result would be to force the United States to participate in the pending state court adjudication in order to quantify a water right for the Klamath Wildlife Refuge.

Considerable time and effort was spent during 1985 on federal water resource financing and cost sharing proposals. The Water Resources Committee reviewed the Council's cost sharing and financing position of April 22, 1983, and determined that the eight principles enumerated as a foundation upon which any new non-federal project financing requirements should be based were still current. The Committee also reviewed state plans for increasing state water project financing efforts, as well as negotiating new cost sharing agreements for federal projects.

By means of a colloquy on the Senate floor on June 21, 1985, a cost sharing agreement with the Administration was outlined, clearing the way for new omnibus authorization legislation for the U.S. Army Corps of Engineers and appropriations for several new federal water project starts. A FY85 supplemental appropriation funded 41 new Corps project starts, including nine in the West, and four new Bureau of Reclamation project starts. However, the appropriations were made subject to negotiation of acceptable cost sharing agreements. The House passed an omnibus Corps authorization bill (which totaled 455 pages) with new cost sharing requirements on November 13, 1985 (H.R. 6). However, the Senate version (S. 1567), with more stringent cost sharing requirements, did not reach the floor in 1985. Council staff prepared an extensive section-by-section summary of both the House and Senate bills, accompanied by an outline of corresponding provisions (common to both bills) affecting various water issues of western interest.

In addition to these and other activities, the Council staff maintained its usual workload including publication of the Council's weekly newsletter, "Western States Water".

RESOLUTIONS AND POSITIONS

The following are positions taken and resolutions passed by the Western States Water Council during 1985.

SOIL CONSERVATION SERVICE FY86 BUDGET AND SNOW SURVEY PROGRAM

On February 4, 1985, the Administration sent its FY86 budget request to Congress. Among other reductions, they proposed phasing out many current Soil Conservation Service programs, including snow survey and water supply forecasting activities in the eleven western states and Alaska. A similar proposal was considered under the Carter Administration. In 1979, the Western States Water Council participated in a \$200,000 study evaluating program alternatives and appropriate levels of federal, state, and local funding. The study considered several alternatives, but determined that the \$2.5M annual federal expenditure for the snow survey program was essential. One alternative considered involved transfer of management and/or financing of program activities to non-federal institutions, perhaps the Western States Water Council. However, no non-federal agency or organization was found which was capable of providing the data and services necessary to maintain a coherent program. Total phase out of the program was also considered, but received no public support given the myriad users (ranging from individual irrigators to many federal agencies) which would have to obtain the snow survey data independently if the Soil Conservation Service program was discontinued. As a result, there was wide support for maintaining the present program.

The following position reaffirms the Council's strong support for the snow survey program specifically, and other Soil Conservation Service programs in general.

POSITION

of the

WESTERN STATES WATER COUNCIL

concerning

Soil Conservation Services FY86 Budget and Snow Survey Program

April 12, 1985

WHEREAS, the President's FY86 budget request for the Soil Conservation Service (SCS) is \$453.2M, which represents a \$156.8M decrease (25.7%) from the FY85 level; and

WHEREAS, the budget proposes terminating most SCS programs by the end of FY86, including National Resources Inventories, resource conservation and development and appraisal programs, river basin surveys and investigations, watershed planning, flood prevention projects, emergency watershed

protection, small watershed projects, state and local trust fund agreements, and snow survey and water forecasting activities in the eleven western states and Alaska; and

WHEREAS, it has been suggested such conservation work either be handled by state and local agencies and private sources or deferred until the federal fiscal situation improves; and

WHEREAS, with respect to the Snow Survey Program, a 1979 U.S. Department of Agriculture study confirmed that state and local groups already significantly contribute money and manpower; and

WHEREAS, any fiscal benefits from reducing the federal deficit through eliminating the snow survey program will not outweigh subsequent costs borne by federal, state and local government agencies and private interests due to the loss of this vital data; and

WHEREAS, an estimated benefit-cost ratio of better than 20 to 1 has been determined for the snow survey program, but an equitable apportionment of program cost to beneficiaries would be virtually impossible; and

WHEREAS, most western watersheds are interstate and the benefits of the snow survey program are national in scope; and

WHEREAS, federal agencies, particularly Interior's Bureau of Reclamation and the Army Corps of Engineers, use this vital data in federal project operation; and

WHEREAS, the 1983 flood damage in the Colorado River Basin highlights the importance of accurate and timely data which the snow survey and water supply forecasting program is designed to provide; and

WHEREAS, the 1979 review found no acceptable state, local or private alternative to the existing federal snow survey program and recommended its continuation under SCS leadership essentially as currently operated.

NOW THEREFORE BE IT RESOLVED, that the Western States water Council strongly opposes any phase-down of the current SCS snow survey program, and further urges the Congress to carefully consider funding decisions for other important SCS programs.

REAUTHORIZATION OF THE CLEAN WATER ACT

The Clean Water Act is a major federal statute governing water pollution control in the United States. In 1984, the House passed a bill to reauthorize the Act. A Senate bill failed to come to the floor for a vote. Early in 1985, both Houses identified the Clean Water Act's reauthorization as a high priority issue. The resolution below was intended to explain the Council's position with respect to eight topics defined by Council members as of major importance. Of particular interest was construction grant funding and the need to phase out federal participation gradually over a period of years.

POSITION
of the
WESTERN STATES WATER COUNCIL
Regarding
Reauthorization of the Clean Water Act
April 12, 1985

WHEREAS, the Clean Water Act is presently being considered in Congress for reauthorization; and

WHEREAS, reauthorization of the Act will promote the laudable goal of achieving fishable and swimmable waters in the United States.

NOW THEREFORE BE IT RESOLVED by the Western States Water Council that the legislation reauthorizing the Clean Water Act meet the following criteria under the following topical headings:

CONSTRUCTION GRANTS

1. The Western States support minimum continuing appropriations as follows:

<i>FY86-FY91</i>	<i>\$2.4B/Yr</i>
<i>FY92</i>	<i>\$1.8B/Yr</i>
<i>FY93</i>	<i>\$1.2B/Yr</i>
<i>FY94</i>	<i>\$.6B/Yr</i>

2. Delegation of the construction grants program to the states, as well as set asides for program management and planning, should continue at present levels.

3. States should be authorized to deploy funds as grants, revolving loans, loan guarantees, or a combination thereof.

4. Funds dedicated to loan accounts by a state should not be reallocated to other purposes by EPA.

5. States should have maximum flexibility to distribute funds among projects, with minimum federal requirements for use of funds.

6. There should be no requirement for state matching funds, with a caveat that states ensure that allocated funds are used for intended purposes.

NPDES PROGRAM

1. *The Western States support state primacy under the NPDES Program through phased or partial delegation at the discretion of the state.*

2. *The Western States support expansion of NPDES permits up to a ten year term provided states having primacy retain the authority to review and revise a permit for cause any time during its term.*

3. *Clean Water Act Section 304 should be amended to be consistent with Section 128 of the Clean Air Act to provide that any board or commission which approves an NPDES permit shall have a majority of members that represent the public interest and do not have any significant portion of their income from permit holders.*

4. *The requirements for NPDES permits for storm water discharges should be limited to only those discharges which are determined to impair designated water use or when such are contaminated by runoff from industrial facilities.*

WATER QUALITY STANDARDS

1. *The states should have the primary role and the flexibility to establish water quality standards that meet the intent of the Clean Water Act.*

2. *Any new or more stringent water quality standards which require corresponding treatment levels beyond the capabilities of existing treatment plants should be accompanied by a reasonable period of time for compliance.*

MONITORING AND ENFORCEMENT

1. *There should be no authority for EPA to take enforcement actions where a state has already taken or is in the process of taking such actions.*

2. *There should be no authority for EPA to make compliance inspections where a state has an acceptable ongoing compliance inspection program.*

PRETREATMENT

1. *The states should have flexibility to determine the type of pretreatment necessary based on case-by-case circumstances.*

2. *Detailed pretreatment activities should be required only where there is an identified need.*

NON-POINT SOURCE POLLUTION

1. *The states should have discretion to determine whether non-point source pollution control programs are implemented on a regulatory or a non-regulatory basis.*

2. *If federal funds are made available for non-point source pollution control, states should have the discretion to use those funds to meet highest priority non-point source pollution problems.*

POLLUTION OF LAKES

The Clean Lakes Program should be continued with adequate funding.

STATE ADMINISTRATION FUNDS

1. *Appropriations for state administration funds should match authorizations.*

2. *The level of appropriations should correspond to new or increased federal program requirements of the Clean Water Act and subsequent amendments and related regulations.*

TESTIMONY ON REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

Spending authorization for Endangered Species Act programs expired on October 1, 1985. However, Congress has continued to appropriate funds, with legislation pending to reauthorize the Act through FY88. The House approved H.R. 1027 on July 29, 1985, and the Senate Environment and Public Works Committee ordered reported S. 725 on December 4, 1985.

First enacted in 1973, the Endangered Species Act has widely affected federal and state water management programs by obstructing many impoundments and diversions which might threaten the continued existence of endangered fishes and other plant and animal species. As the list of threatened and endangered species grows, so does the potential conflict with other multiple water uses. The Council suggested, and actively supported, many of the 1982 amendments to the Act, including a statement of congressional policy that "federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species".

Subsequently, the States of Colorado, Utah, Wyoming, and Nebraska joined the Fish and Wildlife Service and the Bureau of Reclamation in forming working groups in the Upper Colorado and Platte River Basins to try to find solutions to conflicts between endangered species protection and western water development and management. The Council supported this effort, and suggested other actions, in testimony presented by Bill McDonald, Western States Water Council Vice Chairman, at hearings before the Senate Environment and Public Works Committee's, Environmental Pollution Subcommittee on April 16, 1985. An identical statement was submitted for the record to the House Merchant Marine and Fisheries Committee. The testimony and accompanying appendix, outlining project specific conflicts, follow.

TESTIMONY
by
THE WESTERN STATES WATER COUNCIL
on
REAUTHORIZATION OF THE ENDANGERED SPECIES ACT
submitted to the
House Merchant Marine and Fisheries Committee,
Fisheries & Wildlife Conservation and the Environment Subcommittee
and the
Senate Public Works Committee,
Environmental Pollution Subcommittee
on April 16, 1985

Dear Mr. Chairman and Committee Members:

The Western States Water Council is an organization of fifteen western states whose members are appointed and serve at the pleasure of the western governors. The Council has a vital interest in implementation of the Endangered Species Act and its impact on western states' management of their limited water resources.

Background

In July of 1984, the Department of Interior released an updated list of endangered and threatened species. The list includes nearly 60 endangered or threatened fishes alone. Over half of these have an historic range covering one or more western states including Arizona, California, Colorado, Nevada, New Mexico, Oregon, Texas, Utah and Wyoming. In whole or in part these are arid or semi-arid states where limited water resources are in great demand. Moreover, in the past year alone at least three additional western U.S. fish species have been listed as endangered or threatened (the Yaqui chub, Yaqui catfish and beautiful shiner in Arizona, New Mexico and Mexico), and another dozen fishes have been proposed for listing:

- (1) the Modoc sucker — California;
- (2) the Owens tui chub — California;
- (3) the desert pupfish — California/Arizona;
- (4) the Sonora chub — Arizona;
- (5) the Fish Creek Springs tui chub — Nevada;
- (6) the Railroad Valley springfish — Nevada;
- (7) the desert dace — Nevada;
- (8) the Pecos bluntnose shiner — New Mexico;
- (9) the June sucker — Utah;
- (10) the Warner sucker — Oregon;
- (11) the Foskett speckled dace — Oregon; and
- (12) the Hutton tui chub — Oregon.

With respect to the above proposed listings, each notes an existing or potential adverse impact on these species due to the destruction or modification of habitat by such water-related activities as the construction of dams and impoundments, other instream barriers, water diversions and depletion, channelization, siltation, the lining and dredging of irrigation canals, ground water pumping, livestock watering, and water pollution.

As the list of endangered and threatened species lengthens, conflicts with western water-related resource management will increase. For example, proposed listings and listed fishes could affect features of the Central Utah Project, the Central Arizona Project, municipal water supply projects for Cheyenne and the Denver metro area, and other projects which are actually under or moving to construction.

The problem is not limited to the West and Southwest. Other fishes on the endangered species list are found in the States of Arkansas, Oklahoma, Tennessee, Ohio, Alabama, Florida, Georgia, North Carolina, Virginia, and Maryland. Nor is the problem limited to fish. Various species of birds and plants using riverine habitats have been listed, or proposed for listing, as endangered or threatened species.

1982 Endangered Species Act Amendments

Recognizing the importance of preserving our genetic resources, Congress enacted the Endangered Species Act. However, Congress also recognized the potential conflict between implementation of the Act and essential development and management of other natural resources and established specific consultation and exemption procedures. Despite the 1982 amendments, which

greatly improved conflict resolution mechanisms in the Act, problems remain which are a cause of concern to western states' water interests and others.

The Western States Water Council suggested and actively supported many of the 1982 changes to Section 7 to streamline the Act's consultation and exemption procedures, eliminate possible delays, and provide for greater participation in the decision making process by non-federal interests. Unfortunately, the Fish and Wildlife Service has yet to promulgate final regulations implementing all these changes.

The Council also had a hand in preparation of subsection 10(d) of S.2309, which the House accepted, adding a new section 2(c)(2) which states that:

It is further declared to be the policy of Congress that federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species.

The accompanying Senate Report explains that the purpose of the amendment is to "recognize the individual states interest and, very often, the regional interest with respect to water allocation." The report goes on to recognize that "most of the potential conflicts between species conservation and water resources development can be avoided through close cooperation between local, state and federal authorities."¹

However, little has been done to effectively implement the above congressional statement of policy. Conflicts between implementation of the Act and western water resources development and management remain unresolved.

Administrative Resolution of Conflicts

The Western States Water Council supports the resolution of such conflicts through administrative means. The Fish and Wildlife Service should be directed to implement the congressional policy, as expressed in the 1982 Act, to "cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species."² Congressional purpose and policy should be redefined explicitly to state that the conservation of endangered and threatened species is to be achieved in a manner which avoids conflicts with western water resource development and water rights.³

Every effort should be made to mitigate any negative impact on the species through measures that do not inhibit water development and use. Such measures may include habitat modification, artificial propagation (e.g., through hatcheries), appropriate uses of federal reservoirs, reduced planting of competing exotic sport fishes, and other measures which can further the conservation of species without impairing beneficial uses under state law.

The Department of the Interior has established two joint working groups comprised of representatives of the Fish and Wildlife Service, the Bureau of

¹ Senate Report 97-418, dated May 26, 1982.

² 16 USC Section 1531(c)(2).

³ WSWC Position Statements: Endangered Species Act July 31, 1981 adopted in Coeur d'Alene, Idaho and Amendment to Section 404 of the Clean Water Act January 13, 1984, adopted in Phoenix, Arizona.

Reclamation, and the States of Colorado, Utah, and Wyoming, in one instance, and Colorado, Nebraska, and Wyoming in the other. These groups, along with environmental organizations and water user interests, are trying to find solutions to conflicts between endangered species protection and water development and management in the Upper Colorado River and Platte River Basins. Such efforts should be encouraged as being wholly consistent with the congressional directive in section 2(c)(2).

Section 7 Consultations

In 1982, with respect to the consultation process under Section 7, this Committee's report accompanying H.R. 6133 noted:

During fiscal years 1979, 1980, and 1981, a total of 1,945 formal consultations resulted in the issuance of a written statement. Of these, 1,772 resulted in a biological opinion of no jeopardy and 173 resulted in a finding of jeopardy (or 8.9% of these formal consultations).⁴

These figures have been used to illustrate the past success and effectiveness of the consultation process. While this may be true, other explanations may exist.

First, the total number of formal consultations required (1,945) highlight the pervasive distribution of endangered and threatened species, and therefore the potential for conflicts. Further, most biological opinions are issued in routine compliance with the Act, and 173 jeopardy opinions represent a significant number of problems. At least they represent an obstacle to 173 projects. Second, the experience of western states' water interests demonstrate that some jeopardy opinions have been avoided through prior negotiation and agreement on measures to mitigate the potential adverse impact on endangered and threatened species, or actually enhance their status.

Section 7(b)(4) of the Act specifically provides for such mitigation, which has long been an accepted practice for the protection of fish and wildlife resources, particularly as it relates to water resource development and management. However, ambiguity exists with respect to the standard or standards for determining and requiring appropriate mitigation measures, and fixing responsibility for such actions by federal, state and local agencies and project sponsors.

Our experience with different water projects in the West generally, and particularly the Upper Colorado River and Platte River Basins, illustrate existing and potential problems related to the present consultation process and confusion about the limited requirement of Section 7 to protect, not enhance, the current status of endangered and threatened species. The following is a brief outline of some of these problems. A more detailed project-by-project description is appended to this testimony. However, these examples are by no means an exhaustive tabulation of all existing problems and concerns.

In 1961, the City of Cheyene prepared a plan to divert water from the Upper Colorado River Basin into the North Platte drainage. The Fish and

⁴ H. Rpt. 97-567, Part 1 dated May 17, 1982.

*Wildlife Service issued an opinion stating that the proposed diversion threatened the continued existence of endangered and threatened Colorado River Basin fishes. However, the opinion was reversed after the Cheyenne Board of Public Utilities agreed to provide up to \$180,000 to participate in a plan for the conservation of the fish.*⁵

Of note, the new opinion distinguished between the project's threat to the continued survival of the species and its impact on recovery. The opinion states that the phrase, "jeopardize the continued existence of" is defined by regulation as an "activity or program that can reasonably be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild."⁶ Therefore, any action by a project sponsor or other non-federal interest which might impede recovery of a species is defined as jeopardizing its "continued existence."

The Moon Lake Project near Bonanza, Utah is a 400-megawatt coal-fired powerplant now under construction by the Deseret Generation and Transmission Cooperative (Deseret G&T). The plant will divert 30 cubic feet per second (cfs) from the Green River for cooling purposes. The Fish and Wildlife Service originally issued a jeopardy biological opinion stating that the critical flow requirements for endangered fish species in the Colorado River Basin were not known, but until completion of a continuing study, "all official biological opinions on water withdrawal without approved mitigating measures or alternatives will state that the withdrawal from the Green or White Rivers could jeopardize the continued existence of these fish."

*The opinion noted that the Utah Division of Wildlife Resources and Bio/West (an environmental consulting firm in Logan, Utah) had concluded that, "in and of itself the withdrawal of 30 cfs from the Green or White Rivers for the Moon Lake project would not jeopardize the continued existence of the fish species." Still, the Service claimed that, along with the cumulative impacts from other projects, their existence could be jeopardized. Subsequently, Deseret G&T agreed to pay up to \$500,000 for studies and programs designed to conserve the endangered fishes.*⁷

*In June 1983, the Fish and Wildlife Service circulated a "draft conservation plan" for three endangered fishes in the Upper Colorado River Basin. This document suggested requiring maintenance of pre-1960 minimum flows. However, the Fish and Wildlife Service failed to compile and analyze endangered species data, which had been collected over the last twenty years, before making such a drastic proposal.*⁸

In short the requirements of the Act for protecting species under Section 7 may need better definition. The Western States Water Council questions the statutory basis from which the Fish and Wildlife Service has required state,

⁵ *Fish and Wildlife Service Biological Opinion, dated May 29, 1981, addressed to the Denver Regional Forester, (SFS).*

⁶ *50 DFR Section 402.02.*

⁷ *Fish and Wildlife Service Biological Opinion, dated May 13, 1981, addressed to Utah's State BLM Director.*

⁸ *Colorado Water Congress testimony on H.R. 1027, dated March 14, 1985.*

statutory basis from which the Fish and Wildlife Service has required state, local and private project sponsors to agree to participate in recovery measures which enhance the status of a protected species in order to avoid a jeopardy opinion.

Section 7(a)(2) reads as follows:

Each federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of the habitat of such species.

The phrase “not likely to jeopardize the continued existence of any endangered species” is a limited prohibition and the Fish and Wildlife Service has exceeded its statutory authority by defining the phrase by regulation to include recovery of the species. The Secretary’s jeopardy opinion, as generally rendered by the Fish and Wildlife Service, may only take into account the impact of a proposed agency action (and subsequently any related project sponsor’s actions) based on the effect on the “continued existence” of the species.

Section 7(b)(3)(a) continues:

If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the federal agency or applicant in implementing the agency action.

Such requirements, to avoid jeopardy, again may only be based on a project’s threat to the “continued existence” of a species. Further, any non-federal project sponsor should only be responsible for an appropriate share of the cost of mitigating measures which are directly attributable to related project impacts.

Section 4(f) provides:

The Secretary [of the Interior] shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species . . .

Section (3) states:

The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

Such a stringent conservation standard is not required of federal agencies and project sponsors under Section 7. Rather, the Act places the affirmative responsibility of improving the condition of a species only upon the Secretary of the Interior. In other words, enhancement of a species’ condition, or recovery, is a federal responsibility and cannot be required of project sponsors under pretense of Section 7(a)(2). Section 7(a)(2) only relates to situations

where a federal agency action, and in turn the actions of a project sponsor, are likely to "jeopardize the continued existence" of an endangered or threatened species. It is only a mandate that the condition of a species may be made no worse by development than is already the case.

Thus, mitigating measures proposed by the Fish and Wildlife Service as an alternative to issuing a jeopardy opinion can only require a project sponsor to maintain a species "status quo." Indeed, support for such an interpretation of the Act exists in traditional federal water policy which only requires projects to mitigate adverse impacts on fish and wildlife. The federal government should assume the cost of project-related endangered species enhancement measures.

Further, some forum should be established whereby disagreements over biological, hydrologic, and other scientific facts can be challenged and resolved. The Fish and Wildlife Service has sometimes rendered biological opinions which lacked factual content and superficially addressed reasonable and prudent project alternatives.⁹ Given the room for disagreement among experts, state and local interests should have access to some mechanism for challenging Fish and Wildlife Service determinations and receiving an unbiased judgement as to (1) the minimum requirements to maintain a species "continued existence," and (2) prudent and reasonable alternatives for mitigating direct negative project impacts.

In addition, an assessment of a project's cumulative effects is not required by the Act in rendering a biological opinion.¹⁰ The only basis, perhaps, for considering cumulative impacts, involves taking into account necessary measures for bringing about recovery of a species. However, again, recovery efforts are only required of the Secretary of the Interior under Section 4(f), and are not required of any federal agency or project sponsor under Section 7(a)(2).

Summary

In summary, some of the issues which have yet to be resolved and which are of concern to the Western States Water Council involve:

- (1) implementation of Congressional policy, as expressed in the 1982 Act, directing federal agencies to "cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species;"
- (2) failure to observe the distinction between Sections 7(a)(2) and 4(f) and the related federal and state responsibilities;
- (3) the biological, hydrological and scientific integrity of Fish and Wildlife Service jeopardy opinions and recovery plans; and
- (4) the final promulgation of rules implementing the 1982 changes to the Section 7 consultation process.

We urge the Committee and the Congress to carefully consider the above comments.

⁹ WSWC Position Statement, *Endangered Species Act* July 31, 1981, adopted in Coeur d'Alene, Idaho.

¹⁰ *Ibid.*

Western States Water Council Position

Given the initiation of the Upper Colorado River and Platte River Basins task groups, and the possibility for administrative remedies to the problems summarized above, the Western States Water Council supports a simple two-year reauthorization of the Endangered Species Act. Congress should then revisit the matter to determine whether or not administrative solutions have been found to eliminate conflicts between species conservation and vital western water resources development and management.

APPENDIX

The Cheyenne Water Development Project

In 1961, a water supply plan was prepared for the City of Cheyenne known as the Cheyenne Water Development Project. The three-stage plan entails diverting water from the Little Snake River, a tributary of the Yampa River in the Upper Colorado River Basin, into the North Platte drainage. Stage one of the project was completed in 1967. The City of Cheyenne sought a 23,000 acre-foot diversion for stage two, and the Fish and Wildlife Service originally issued a jeopardy opinion based on the assumption that the diversion would jeopardize the continued existence of endangered and threatened Colorado River Basin fishes. The opinion was reversed after the Cheyenne Board of Public Utilities agreed to provide up to \$180,000 to participate in a plan for the conservation of the species.¹¹

Of note, the new opinion distinguished between the project's threat to the continued survival of the species and its impact on recovery. The opinion states that the phrase, "jeopardize the continued existence of" is defined by regulation as an "activity or program that can reasonably be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild."¹²

Though the project would not appreciably reduce the likelihood of the survival of the species, with respect to recovery, the Fish and Wildlife Service claimed insufficient data was available to evaluate the impact of the project. However, because the endangered status of the fish can be related to decreased flows in the Colorado River Basin, additional water use was judged likely to make recovery of the species more difficult. The Service ruled that the project would appreciably reduce the likelihood of recovery of the species, but that such impacts would be offset by the Board's agreement to participate in conservation and recovery measures.

Stage three of the project, to be funded with \$230 million of state money, is under study.

The Windy Gap Project

Similarly, with respect to the Windy Gap Project in Colorado, the Fish and Wildlife Service determined it was not likely to jeopardize the continued existence of Colorado River fishes after requiring specific conservation measures to offset the impact of the project on the recovery of the fishes. These conservation measures included an average annual bypass of some 11,000 acre-feet to maintain downstream habitat. Further, the Northern Colorado Water Conservation District, the project's sponsor, agreed to fund the creation of back-water habitat areas and a field research team to evaluate habitat improvement techniques and continue collecting physical data. The Windy Gap Project would utilize existing features of the Colorado-Big Thompson Project to divert

¹¹ Fish and Wildlife Service Biological Opinion, dated May 29, 1981, addressed to the Denver Regional Forester (USFS).

¹² 50 CFR Section 402.02.

an average of 57,300 acre-feet of water from the Colorado River Basin to Colorado's eastern slope.¹³

The Moon Lake Powerplant

The Moon Lake Project near Bonanza, Utah, is a 400-megawatt coal-fired powerplant now under construction by the Deseret Generation and Transmission Cooperative (Deseret G&T). Using a series of shallow wells, the project would divert about 30 cfs from the Green River for cooling purposes. In addition, just over 300 acre-feet annually would be diverted from the White River, near Rangely, Colorado, for a related coal mining operation.

Originally, the Fish and Wildlife Service issued a jeopardy biological opinion which stated that the critical flow requirements for three endangered fish species in the Colorado River Basin were not known, but until a continuing study was completed, "all official biological opinions on water withdrawal without approved mitigating measures or alternatives will state that the withdrawal from the Green or White Rivers could jeopardize the continued existence of these fish." However, the jeopardy statement also included the following observation:

*This opinion is not agreed upon by all experts. The position of the Utah Department of Health, the Utah Division of Wildlife Resources, and the Bio/West (environmental consultant firm in Logan, Utah) is that in and of itself the withdrawal of 30 cfs from the Green or White Rivers for the Moon Lake Project would not jeopardize the continued existence of the fish species. However, along with the cumulative impacts from other projects, their existence could be jeopardized.*¹⁴

Subsequently, Deseret G&T and the Fish and Wildlife Service agreed on specific mitigating measures to include either: (1) negotiation of the contract purchase of up to 30.5 cfs (22,089 acre-feet) of water from Flaming Gorge Reservoir from the Bureau of Reclamation; or (2) a contract to pay up to \$500,000 for the purpose of financing studies and/or programs designed to conserve the endangered fish species in the Green and White Rivers.¹⁵

The first option has been eliminated for at least two reasons. First, the purchase of water from storage in Flaming Gorge actually does nothing to resolve the problem as the depletion of water from the river basin would be the same. Second, implementation of this option would have required approval by the Utah State Engineer for the change in the point of diversion and nature of use. This would have been at least problematic, particularly given the fact that Deseret G&T already holds a valid state water right for the withdrawal of 30 cfs from the Green River, and Utah does not recognize instream flows as a beneficial use for which water can be appropriated.

¹³ Fish and Wildlife Service Biological Opinion, dated March 13, 1981, addressed to the Lower Missouri Regional Director of the Bureau of Reclamation.

¹⁴ Bureau of Land Management, *Moon Lake Project Draft EIS* January 8, 1981, page 14.

¹⁵ Fish and Wildlife Service Biological Opinion, dated May 13, 1981, addressed to Utah's State BLM Director.

Though the first option was dropped, such offset requirements by the Fish and Wildlife Service raise grave questions concerning the rights of Upper Basin States to deplete their entitlements under existing laws and compacts on the Colorado River approved and ratified by the Congress and the States.

In the Moon Lake case, the powerplant is under construction and negotiations are now under way to determine the appropriate sum of the required money. Of note, the \$500,000 figure was determined by taking the estimated total cost of present Fish and Wildlife Service recovery-management plans for endemic Colorado fishes, which is approximately \$20M, multiplied by 2.5% (which is equal to the proposed depletion of 22,089 acre-feet divided by the current depletion from the Green River of approximately 857,000 acre-feet).

The White River Dam

In 1978, the Utah State legislature authorized construction of the White River dam and hydroelectric generation project in eastern Utah. The reservoir would supply water for development of oil shale resources in the Uinta Basin, water for irrigating Indian lands, and a run of the river hydropower plant. The State of Utah, through project BOLD, has negotiated extensively with the Department of Interior to consolidate state lands and mineral lease holdings within the Uinta Basin into economic mining units. A proposal ratifying the necessary exchange of federal and state lands was introduced in the 98th Congress. Providing an adequate and dependable water supply will be essential to future progress and development of the oil shale industry in eastern Utah.

A "no jeopardy" biological opinion was issued, with approved mitigating measures, after two years of consultation between the Fish and Wildlife Service and the Bureau of Land Management and an extensive study of the endangered Colorado fishes. The State of Utah did not pressure the Fish and Wildlife Service for an earlier opinion, in part due to clear indications that a jeopardy opinion would be issued. At end, the state agreed to the following mitigating measures: (1) outlet works designed to allow water releases from different reservoir levels to maintain natural water temperatures; (2) specific minimum releases; (3) habitat enhancement; (4) possible propagation and supplemental stocking; (5) development of a reservoir fishery using only native species; and (6) participation in further studies. The possibility of a fish ladder has also been left open.¹⁶ A re-evaluation of the above requirements is likely once the economics of the oil shale industry bring construction of the dam closer to reality. Further, continuing studies of the endangered fishes have discounted the possibility of the White River as a spawning area, and thereby reduced its importance as habitat.

All of the above problems relate to water withdrawals from the Upper Colorado River Basin, but there are also conflicts in other western river basins.

¹⁶ *Fish and Wildlife Service Biological Opinion, dated February 24, 1981, addressed to Utah's State BLM Director.*

Stampede Dam and Reservoir

The Washoe Project Act of 1958 authorized \$52M for construction of the Stampede Dam and Reservoir under federal reclamation law. The Act specifically included up to \$2M for measures to permit increased minimum water releases from lake Tahoe and restoration of the Pyramid Lake Fishery.¹⁷ The project was constructed prior to final agreement and signing of the repayment contract with the Carson-Truckee Water Conservation District. Subsequent to construction of the project, the Secretary of Interior determined that the Endangered Species Act required him to operate the Stampede Dam so as to conserve the qui-ui fish and Lahontan cutthroat trout, endangered species. The Secretary further determined that there was no excess water to sell after fulfilling this statutory obligation.

The Carson-Truckee Water Conservation District and Sierra Pacific Power Company sought a declaratory judgement that the Secretary of Interior violated the Washoe Project Act, and related reclamation laws, in refusing to sell water from Stampede Dam for municipal and industrial use in the Reno and Sparks, Nevada area. While conceding the Secretary has an obligation under the Endangered Species Act, the local interests challenged the extent of that obligation. The Secretary's decision was upheld by a district court and the U.S. Ninth Circuit Court of Appeals. A petition for a writ of certiorari has been denied by the U.S. Supreme Court. The Western States Water Council prepared an amicus brief in that case (Nevada v. Hodel), which was signed and filed on behalf of eleven states on February 22, 1985. The issue addressed is "whether the Endangered Species Act requires the Secretary of Interior to restore endangered species to original population levels by utilizing resources authorized by Congress for reclamation purposes where the intent of the reclamation statute can be achieved without jeopardizing endangered species."

Wildcat Dam and Reservoir

The Riverside Irrigation District and the Public Service Company of Colorado have proposed a dam and reservoir on Wildcat Creek, a tributary of the South Platte River in Morgan County, Colorado. The developed water would be used for irrigation and for cooling a coal-fired powerplant. After obtaining from the State of Colorado all water rights pertaining to the dam's construction, the District sought the necessary Section 404 dredge and fill permit (nationwide permit) required under the Clean Water Act.

However, the Corps of Engineers denied the permit because of a Fish and Wildlife Service biological opinion which concluded: "The Wildcat Reservoir is likely to jeopardize continued existence of the whooping crane and adversely modify a 53-mile reach of the Platte River which is critical habitat for the crane."¹⁸ The critical habitat area is located approximately 250 miles downstream from the proposed reservoir project. The whole basis for the finding of

¹⁷ Washoe Project Act of 1956, 70 Stat. 7175, as amended, 43 USC §614c-614d.

¹⁸ Fish and Wildlife Service Biological Opinion, dated December 20, 1979, addressed to the Corps of Engineers.

adverse modification of the habitat was that water depletions from Wildcat Creek, and subsequently the North Platte River, would result because of construction of the dam. The irrigation district challenged the Corps' decision in court, which has now been upheld by the U.S. Tenth Circuit (*Riverside Irrigation District v. Andrews*).

Grayrocks Dam and Reservoir

The *Riverside* case is but a delayed replay of the controversy surrounding the Grayrocks Dam and Reservoir Project. As part of the Missouri River Basin Power Project, Grayrocks Dam provides cooling water for the 1500-megawatt coal-fired Laramie River Power Station. It also provides irrigation water and recreation benefits. The project was subject to Endangered Species Act limitations under Section 7 due to Rural Electrification Administration (REA) loan guarantees, and again a Corps 404 permit. The Fish and Wildlife Service opposed the project because of the possibility that it and other existing and proposed projects could reduce the flows of the Platte River sufficiently to adversely impact critical habitat of the whooping crane nearly 300 miles downstream in Nebraska.

Short circuiting the then newly approved exemption process, Congress amended the Act to require the Endangered Species Committee, notwithstanding any other provision of law, to consider exemption of the Tellico and the Grayrocks Dams from the requirements of Section 7(a) within 30 days of the date of enactment of the 1978 amendments and render a decision within 90 days of enactment. Otherwise, the projects would be exempted. Congress further directed the relevant federal agencies to require modifications to the Grayrocks Project to "insure that actions authorized, funded, or carried out by them relating to the Missouri Basin Power Project do not jeopardize the continued existence of such endangered species or result in the destruction or adverse modification of habitat of species . . . after consultation as appropriate with the affected States."¹⁹ The Congress made no reference to recovery or conservation of the species. Rather the only mitigation requirement was that agency actions not jeopardize the species' continued existence.

The final mitigation measures, which were approved by the Endangered Species Committee, were developed independent of the Section 7 consultation process, by parties to litigation involving the project, as part of an Agreement for Settlement and Compromise signed December 4, 1978.²⁰ Under the settlement, the Missouri Basin Power Project agreed to: (1) limit its maximum water use to 23,250 acre-feet annually; (2) establish a \$7.5 million trust fund for the maintenance and enhancement of the whooping crane's critical habitat along the Platte River (including the purchase of water rights downstream to replace depletions caused by the project); and (3) otherwise restrict operations of the project. Further, the Fish and Wildlife Service noted that it would likely oppose any future depletions on the Platte as a threat to the critical habitat of the whooping crane. The Fish and Wildlife Service's purpose in opposing further

¹⁹ Section 10(i)(1), P.L. 95-632, Amendments to the Endangered Species Act, November 10, 1978.

²⁰ Endangered Species Committee, application for exemption for Grayrocks Dam and Reservoir, order dated February 7, 1979, signed by Interior Secretary Cecil Andrus. See also 9 Environment Reporter 1418.

depletions was to maintain flood flows which remove underbrush which is used as cover by predators in stalking whooping cranes.

With respect to the Grayrocks Project and the whooping crane, the critical habitat on the Platte River in central Nebraska, as proposed by the Fish and Wildlife Service in 1975, included an area of 2,600 square miles — much of which had not had a confirmed whooper siting in many years.²¹ Following public protest, the final designation included a three-mile wide strip along the Platte River with a total area of less than 260 square miles. Of note, suitable crane habitat along the Platte shrunk by over 50% between 1938 and 1976, but during this same period the whooping crane population nearly quadrupled.

This suggests that perhaps the loss of habitat was not that critical after all. Rather, the goal of Section 7 is not simply conservation of endangered species, but preservation of natural ecosystems. The Fish and Wildlife Service, faced with planned depletions on the Platte River which totaled over 40% of the annual flow, some of which might be beyond the jurisdiction of the Endangered Species Act, took a very conservative stance. The major issue inherent in implementation of past endangered species policy has not been whether projects that will eradicate a species will be allowed, but the extent to which activity will be controlled to reduce the risk faced by endangered species.²² At present, the issue is over responsibility for mitigation and enhancement measures to reduce risks to species status, if any, caused by necessary development.

There are several other examples of past, present and potential conflicts between western water development projects and the conservation of endangered species. Further, conflicts will continue to increase as more species are listed and the demand grows for limited water resources.

²¹ Winston Harrington, "The Endangered Species Act and the Search for Balance," *Natural Resources Journal*, Volume 21, page 83.

²² *Ibid.*

THE SAFE DRINKING WATER ACT

In the past, Safe Drinking Water Act (SDWA) related issues have not been given high priority by the Council. As the SDWA reauthorization was debated in 1984, the Council's Water Quality Committee determined SDWA issues deserved greater attention. Although the House passed a SDWA reauthorization bill in 1984, the Senate did not. However, once debate began in 1985, both Houses moved very quickly, passing S. 124 and H.R. 1650. So quickly, in fact, that in order to participate in the decision making process, the Council passed the resolution below by way of an emergency Executive Committee conference call. The resolution below identifies major areas of concern.

WESTERN STATES WATER COUNCIL

Statements of Principal Regarding

Issues Related to

the

Federal Safe Drinking Water Act

July 3, 1985

The Western States Water Council supports the principles listed under the following topical headings:

GROUND WATER QUALITY

1. The states have the primary role in managing ground water resources and controlling ground water pollution.

2. As applied to ground water, the scope of the federal Safe Drinking Water Act (SDWA) should be limited to ground water resources suitable or potentially suitable for drinking purposes.

DRINKING WATER STANDARDS

1. Timely promulgation of minimum national drinking water standards is a proper function of the United States Environmental Protection Agency (EPA). EPA should only promulgate such standards as adequate health effects data upon which to base the standards are developed.

2. Health effects research and risk assessment of drinking water pollutants should be vigorously pursued by EPA. Information generated should be regularly provided to the states.

3. EPA should formally promulgate only enforceable, as opposed to recommended, drinking water maximum contaminant levels. Health advisories should continue to be developed and issued by EPA as an aid to the states.

DEFINITION OF TREATMENT METHODS

EPA should conduct appropriate research to determine the capability of treatment techniques to remove chemical contaminants. State officials have sufficient expertise to determine which technologies are best suited to treat particular drinking water supplies. Allowing flexibility in these decisions will assure the use of the most appropriate and sophisticated technologies as they develop.

ENFORCEMENT AND NOTIFICATION

1. EPA and the states should be allowed flexibility to carry out enforcement actions which will assure maximum protection of drinking water supplies.

2. The states, as delegated primacy agents of EPA, should be given flexibility to determine when public notification of SDWA violations is appropriate and what form the notification should take.

DISINFECTION

1. All public drinking water sources should be disinfected prior to consumption if required by state regulation. Further, the SDWA and regulations should specify maximum permissible levels of bacterial contamination.

2. Variances from disinfection requirements should be allowed where appropriate.

SURFACE SOURCE TREATMENT

1. All surface drinking water sources should be chemically treated, filtered, and disinfected. Such requirements should also apply to unprotected ground water sources.

2. Variances from surface drinking water treatment should be allowed where appropriate.

AQUIFER PROTECTION PROGRAMS

Federally mandated aquifer protection programs should not overlap or duplicate ground water protection programs already in place.

FEDERAL FINANCIAL AND TECHNICAL ASSISTANCE

1. State program grant funds should be increased to respond to the resulting increased complexity imposed by any amendments to the SDWA.

2. The EPA role of funding and/or providing drinking water research and training opportunities should be expanded.

STATE WATER RIGHT ADJUDICATIONS

A goal of longstanding importance to western states is achievement of final determinations of water rights through general water right adjudications. The success of this process requires all claimants to come forward and participate, making all claims, and agreeing to be bound by the result. In November of 1983, the Ninth Circuit Court of Appeals handed down a decision which involved a general adjudication. In United States v. Adair, the court held, among other things, that a federal district court did not abuse its discretion in exercising its jurisdiction to hear the case, notwithstanding that a state general adjudication proceeding was pending, and that the United States could not convert Indian hunting and fishing reserved water rights to forest and wildlife purposes for the Klamath National Wildlife Refuge. In June of 1984, the United States Supreme Court declined to review the decision, and it became final.

Following this, the United States filed a post judgement amended complaint, seeking to obtain water rights for the Klamath Forest National Wildlife Refuge under a theory not pursued originally in United States v. Adair, or in the Oregon general stream adjudication of the Klamath Basin. The district court allowed the complaint to be filed over Oregon's arguments to the contrary. These facts led the Council to pass the following resolution.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Regarding
Deference to State Water Right Adjudications
October 11, 1985

WHEREAS, the McCarran Amendment (43 USC § 666) provides for determination of federal water rights in state general water rights adjudications and authorizes state jurisdiction over the United States in such proceedings; and

WHEREAS, the United States Supreme Court has stated in several cases, notably Arizona v. San Carlos Apache Tribe of Arizona, _____ US _____, 103 S. Ct 3201 (1983) and Colorado River Water Conservation District v. United States, 424 US 800, 96 S Ct 1236, 47 L Ed 2d 483 (1976), that, absent exceptional circumstances, where there is a pending state general water rights adjudication, federal water rights applicable to lands within the adjudication area should be determined in the state proceeding and that federal courts should defer to such state adjudication; and

WHEREAS, it has been the stated policy of the federal government to cooperate with and defer to state administration and adjudication of water rights toward the end of avoiding duplication of effort and the possibility of conflicting federal and state determination; and

WHEREAS, there is pending in Oregon a general adjudication of the water rights of the Klamath River Basin; and

WHEREAS, the United States has filed suit in federal district court for the district of Oregon seeking a declaration of certain water rights for the Klamath Forest National Wildlife Refuge;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urges the Department of the Interior, in coordination with the Department of Justice, to take all appropriate steps, consistent with long-standing federal policy of deference to state adjudications, to accomplish the dismissal or stay of the federal proceedings pending completion of the state general adjudication.

THE SMALL RECLAMATION PROJECTS ACT

In 1965, Congress authorized \$600M under the Small Reclamation Projects Act for grants and loans to build and rehabilitate primarily small irrigation projects in the West. Facing exhaustion of this spending authority, bills were introduced in 1984, and again in 1985 (H.R. 2025 and S. 1171), to provide an additional \$600M. However, legislative progress stalled due to opposition over interest free program loans, projects which irrigate crops in surplus production, and potential adverse environmental impacts. Given the past popularity of the program in the West and its potential for improving future water use efficiency, the Western States Water Council adopted the following position strongly supporting an additional \$600M appropriation.

*POSITION
of the
WESTERN STATES WATER COUNCIL
Regarding
Raising the Appropriation Ceiling
under the
Small Reclamation Projects Act of 1956
October 11, 1985*

WHEREAS, the Bureau of Reclamation's program under the Small Reclamation Projects Act has helped facilitate federal/state cooperative water development in the West; and

WHEREAS, some 125 projects have been completed or are under construction, with significant non-federal investment in another 45 projects which need funding; and

WHEREAS, the existing appropriation ceiling will soon be reached; and

WHEREAS, the Bureau has established reasonable terms for the repayment of federal loans, which constitute about 97% of the program; and

WHEREAS, there have been no defaults on any loans made under the program;

THEREFORE BE IT RESOLVED that the Western States Water Council supports raising the existing appropriation ceiling by an additional \$600 million (effective October 1, 1986) and opposes any amendments which would threaten the integrity and effectiveness of this program.

FEDERAL WATER PRICING POLICIES

Given the growing demand for municipal water supplies in the West, the existing allocation of water (and related costs) from federal storage projects is being reevaluated. The U.S. Army Corps of Engineers has viewed the new market circumstances, in proposing water sale contracts to potential municipal customers, as an opportunity to generate additional revenue for the Federal Treasury. Based on the accepted public policy of pricing water and related services from federal projects so as to repay appropriate costs, rather than maximize revenue (or profits), the Council adopted the position which follows.

Of note, language in the House report accompanying the FY86 Energy and Water Development Appropriations Act (H.Rpt. 99-195) included language similar to that proposed by the Western States Water Council and the Interstate Conference on Water Problems. Further, discussion of the matter brought out a separate (but related) issue which the above position does not address. In the Missouri River Basin, the Corps has also attempted to charge a storage fee for proposed withdrawals from federal reservoirs by a state, even though sufficient water would have been made available from the river for the proposed withdrawal prior to construction of the federal dam.

POSITION

of the

WESTERN STATES WATER COUNCIL

Regarding

*Pricing Policies For Storage Reallocated to
Water Supply Storage at a Federal Reservoir*

October 11, 1985

WHEREAS, federal reservoirs are a national asset and federal policy should be based on achieving repayment of those project costs where repayment is required by law, rather than to maximize federal revenues; and

WHEREAS, consistent with the above policy, when storage space is reallocated to water supply storage at a federal reservoir, non-federal interests should not be required to pay more than the proportionate share of the project's original cost, plus interest if required in connection with the original project purpose at the rate in effect at the time when the project was constructed, as provided for by the Water Supply Act of 1958; and

WHEREAS, Congress is now addressing this issue as it considers H.R. 2959, the 1986 Energy and Water Development Appropriation Bill; and

WHEREAS, the Council wishes to express its views relative to this issue.

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urges the Congress and the Administration to adopt the following policy:

When storage space is reallocated to water supply storage at a federal reservoir, non-federal interests should not be required to pay more than the proportionate share of the project's original cost,

plus interest if required in connection with the original project purpose at the rate in effect at the time when the project was constructed, as provided for by the Water Supply Act of 1958.

NOW THEREFORE BE IT FURTHER RESOLVED that the Council urges Congress, in considering reallocation of storage space in federal reservoirs, to assure that federal agencies strictly respect state water law and state water management responsibilities. In all studies and decisions related to allocation, federal agencies should be required to consult with all affected states and follow applicable state laws on water rights and water quality.

BUDGET AND FINANCE

At the quarterly meeting held April 10, 1985, in Reno, Nevada, the Executive Committee considered a budget for FY85/86 of \$289,600. A previously approved dues schedule called for a yearly assessment of \$19,500 per state to remain in effect for FY86 and FY87. The Committee unanimously amended the schedule to include an increase in the FY88 dues to \$22,800. The proposed FY86 budget was 1.5% less than the previous year, and utilized some of the Council's reserve funds.

The audit for FY85, prepared by the firm of Hansen, Barnett and Maxwell, was presented to the Executive Committee by the Executive Director at the annual meeting in July at Anchorage, Alaska. The Auditor's Report was accepted unanimously as written. The accounting policies of the Western States Water Council conform to generally accepted accounting principles as applicable to governmental units. The Council utilizes the modified accrual basis of accounting. The Auditor's Report and the financial statement are reflected on the following pages.

HANSEN, BARNETT & MAXWELL

A PROFESSIONAL CORPORATION

CERTIFIED PUBLIC ACCOUNTANTS

345 EAST BROADWAY
SALT LAKE CITY, UTAH
84111

Members of the Council
Western States Water Council
Salt Lake City, Utah

We have examined the combined balance sheet - general fund and general fixed asset group of accounts of the Western States Water Council as of June 30, 1985 and 1984 and the related general fund statements of revenues and expenditures and changes in fund balance - budget and actual for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of the Western States Water Council at June 30, 1985 and 1984 and the results of its operations for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Our examinations were made for the purpose of forming an opinion on the financial statements taken as a whole. The schedule of changes in the general fixed asset group of accounts is presented for the purposes of additional analysis and is not a required part of the financial statements. Such information has been subjected to the auditing procedures applied in the examinations of the financial statements and, in our opinion, is fairly stated in all material respects in relation to the combined financial statements taken as a whole.

July 3, 1985

Hansen, Barnett & Maxwell

WESTERN STATES WATER COUNCIL

General Fund

Statements of Revenues and Expenditures and Changes in Fund Balance - Budget and Actual For the Years Ended June 30, 1985 and 1984

	<u>Budget</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>
	<u>1985</u>	<u>June 30,</u>	<u>(Under)</u>	<u>June 30,</u>
		<u>1985</u>	<u>Budget</u>	<u>1984</u>
			<u>1985</u>	
REVENUES				
Member States' assessments	\$253,500	\$271,500	\$ 18,000	\$237,500
Other miscellaneous income ...	—	9,600	9,600	18,365
Interest income	—	19,509	19,509	16,419
TOTAL REVENUES	<u>253,500</u>	<u>300,609</u>	<u>47,109</u>	<u>272,284</u>
EXPENDITURES				
Salaries	142,500	142,272	(228)	131,845
Travel	22,500	21,375	(1,125)	23,853
Payroll taxes and employee benefits	40,000	39,820	(180)	36,651
Printing and reproduction	22,100	22,077	(23)	19,866
Rent	20,000	19,286	(714)	17,042
Freight and postage	6,800	6,624	(176)	6,439
Telephone	5,300	5,644	344	5,259
Office Furniture, fixtures and equipment	20,200	22,902	2,702	—
Office supplies	4,500	4,579	79	3,992
Reports and publications	3,000	2,871	(129)	2,338
Meetings and arrangements	1,200	1,055	(145)	2,282
Accounting	1,400	1,356	(44)	1,244
Insurance	800	729	(71)	516
Contingencies	5,000	5,036	36	4,320
Total Expenditures	<u>295,300</u>	<u>295,626</u>	<u>326</u>	<u>255,647</u>
EXCESS (DEFICIENCY) OF				
REVENUES OVER				
EXPENDITURES	(41,800)	4,983	46,783	16,637
FUND BALANCE -				
BEGINNING OF YEAR	<u>111,554</u>	<u>111,554</u>	<u>—</u>	<u>94,917</u>
FUND BALANCE -				
END OF YEAR	<u>\$ 69,754</u>	<u>\$116,537</u>	<u>\$ 46,783</u>	<u>\$ 111,554</u>

The accompanying notes are an integral part of these financial statements.

COMMITTEE CHARTERS AND MEMBERS

The committee charters, committee membership and subcommittee assignments follow:

EXECUTIVE COMMITTEE CHARTER

This charter of the Executive Committee of the Western States Water Council was adopted by resolution on January 29, 1970, at the meeting of the Council in Seattle, Washington and amended on July 26, 1979 at the meeting in Sitka, Alaska, and on October 16, 1981 at the meeting in Jackson, Wyoming. It is the administrative and steering committee of the Council on matters outlined in this Charter and such other matters as may be related thereto.

Objective

The committee shall assist the Council in carrying out effective cooperation among western states in planning for programs leading to integrated development of water resources by state, federal, and other agencies; by acting as a steering committee; by making sure there is consistency and no overlap of Council liaison with national organizations, including the Interstate Conference on Water Problems, National Governors' Association, Water Resources Council, federal departments, National Water Resources Association, Council of State Governments; and by establishing and maintaining liaison with western organizations such as the Western Governors' Conference and the Western Governors' Policy Office.

Authority

The authority of the Executive Committee derives from the Council itself and includes the following powers: (1) To act upon internal and administrative matters between meetings of the Council; (2) To call special meetings of the Council on external matters when prompt action by the Council before the next regular meeting is deemed necessary by a majority of Executive Committee members; (3) To create working groups and ad hoc groups; (4) To make assignments to committees; (5) To receive committee reports; and (6) To implement actions and programs approved by the Council.

Program

The Committee shall correlate the Council's liaison with national and regional agencies, and correlate the Council's efforts to keep abreast of broad-scaled developments as they relate to Council programs. The Committee shall be authorized to initiate recommendations for Council actions at conferences, hearings, and special meetings with national water leaders. The Committee may make assignments to other committees and may give direction as to the scope and nature of their activities, and may delegate authority it deems appropriate to the Management Subcommittee of the Executive Committee. The Management Subcommittee is composed of the immediate past chairman, the chairman, the vice-chairman, the secretary-treasurer, and the Executive Director. In the event that one of these positions is vacant, the position on the Management Subcommittee can be filled by a member of the Executive Committee at the discretion of a majority vote of the Management Subcommittee.

Organization and Voting

The Executive Committee of the Western States Water Council consists of one representative from each member state in accordance with Article IX -Executive Committee - of the "Rules of Organization." The Chairman and Vice Chairman of the Council shall serve as officers of the Executive Committee but do not necessarily have to be voting members of the Executive Committee. The Council staff furnishes necessary assistance as desired and requested by the Executive Committee.

Each member of the Executive Committee shall have one vote in conducting business. A quorum shall consist of a majority of members. A majority of those voting shall prevail on internal matters. If an external matter comes before the Executive Committee between Council meetings, and the Executive Committee finds an emergency exists, it may take final action by unanimous vote of all members. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

Meetings

Regular meetings of the Executive Committee may be held in conjunction with meetings of the Council. Special meetings of the Executive Committee may be called by the Chairman, or by the Vice-Chairman in the event the Chairman is incapacitated, or by any six (6) members, upon five-days notice to all members stating the time and place of the meeting. When all members are present, no notice is required. All meetings may be adjourned to a time certain by majority vote of those present.

Reporting

The Committee shall report to the Council at each Council meeting as to any actions it may have taken between meetings.

EXECUTIVE COMMITTEE MEMBERS

Esther C. Wunnicke - Alaska
Kathy Ferris - Arizona
David Kennedy - California
David H. Getches - Colorado
A. Kenneth Dunn - Idaho
John E. Acord - Montana
Roland D. Westergard - Nevada

S.E. Reynolds - New Mexico
William H. Young - Oregon
John T. Montford - Texas
Dee C. Hansen - Utah
Andrea Beatty Riniker - Washington
George Christopoulos - Wyoming

MANAGEMENT SUBCOMMITTEE

Chairman
Vice-Chairman
Secretary/Treasurer
Past Chairman
Executive Director

Management Subcommittee

John E. Acord - Montana - Chairman

J. William McDonald - Colorado
Vice Chairman

Ray W. Rigby - Idaho
Past Chairman

Roland D. Westergard - Nevada
Secretary/Treasurer

D. Craig Bell
Executive Director

Water Management Symposium Subcommittee

J. William McDonald - Colorado
John E. Acord - Montana

Glen Fiedler - Washington



Back Row: George Christopulos, Dee C. Hansen, John E. Acord, William H. Young, Tom Hawkins

Front Row: Charles Nemir, Kathy Ferris, David Kennedy, A. Kenneth Dunn

Not Pictured: Esther Wunnicke, David H. Getches, J. William McDonald, Roland Westergard, Steve Reynolds, John T. Montford, Andrea Beatty Riniker

LEGAL COMMITTEE CHARTER

Objective

The Committee shall assist in initiating, establishing and carrying out the objectives of the Council by providing guidance on the social, ethical, legal and political aspects of the programs relating to water resource and water quality.

Program

To review and develop recommended Council positions on current legislation, laws, administrative rules and activities relating to water resources, water rights, related land use and Indian issues and to examine and keep the Council current on all ongoing pertinent court cases.

Organization and Voting

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the state's delegates to the Council. Any Legal Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

Meetings

The Committee shall meet at the call of the Committee chairman.

Reports

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or Executive Committee.

Charter Adoption

This Charter of the Legal Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

LEGAL COMMITTEE MEMBERS

Charles B. Roe, Jr. — Washington - Chairman
Hal Brown - Alaska
Kathy Ferris - Arizona
Dave Kennedy - California
David H. Getches - Colorado
Ray Rigby - Idaho
Donald MacIntyre - Montana
Roland Westergard - Nevada
Charles DuMars - New Mexico
George Proctor - Oregon
John T. Montford - Texas
Thorpe A. Waddingham - Utah
Willard Rhoads - Wyoming

Joint Ground Water Subcommittee

Charles B. Roe, Jr. — Washington - Chairman
Gary Broetzman - Colorado
David Kelley - California
Charles E. Nemir - Texas
George Proctor - Oregon

Migratory Bird Treaty Act Subcommittee

George Proctor - Oregon - Chairman
Charles DuMars - New Mexico
David Kennedy - California

Reserved Rights Subcommittee

Roland Westergard - Nevada
George Proctor - Oregon



Back Row: Dallin Jensen, Roland Westergard, Dave Getches, George Proctor
Front Row: Willard Rhoads, Charles Roe, Kathy Ferris, Norman Johnson, Ray Rigby
Not Pictured: Hal Brown, David Kennedy, Donald MacIntyre, Charles DuMars, John T. Montford, Thorpe A. Waddingham.

WATER RESOURCES COMMITTEE CHARTER

Objective

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on water resources planning, conservation, and developments that are of common interest to the Council.

Program

To review and develop recommended Council positions on current legislation, regulations, criteria, plans and problems relating to water planning, management and conservation development for all purposes, and utilization.

Organization and Voting

Committee membership is by appointment by the states of the Council, one member from each state, but not necessarily one of the state's delegates to the Council. Any Water Resource Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

The Committee chairman shall be appointed by the Chairman of the Council from Committee membership. The Committee chairman will appoint a vice chairman, and subcommittees as needed. The Council staff will furnish necessary assistance as desired and requested by the Committee. A member of the staff will serve as secretary.

Meetings

The Committee will meet at the call of the Committee chairman.

Reporting

The Committee shall submit its reports and/or recommendations to the Council and to the Executive Committee if so requested. The Committee shall not issue any public statements or reports except as may be directed by the Council and the Executive Committee.

Charter Adoption

This Charter of the Water Resources Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

WATER RESOURCES COMMITTEE MEMBERS

A. Kenneth Dunn - Idaho - Chairman
William H. Young - Oregon - Vice Chairman

Esther C. Wunnicke - Alaska
- Arizona
Senator Ruben Ayala - California
J. William McDonald - Colorado
John E. Acord - Montana

Jack L. Stonehocker - Nevada
S. E. Reynolds - New Mexico
Charles E. Nemir - Texas
D. Larry Anderson - Utah
Wilbur G. Hallauer - Washington
Warren White - Wyoming

Endangered Species Act Subcommittee

Barry Saunders - Utah - Chairman
J. William McDonald - Colorado
Roland Westergard - Nevada



Back Row: Wes Steiner, D. Larry Anderson, John E. Acord, William H. Young,
Tom Hawkins
Front Row: Senator Ruben Ayala, Charlie E. Nemir, Jack Stonehocker,
A. Kenneth Dunn
Not Pictured: Esther Wunnicke, J. William McDonald, Jeris A. Danielson, Steve
Reynolds, Wilbur Hallauer, Warren White

WATER QUALITY COMMITTEE CHARTER

Objective

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on the water quality and environmental aspects of all programs of interest to the Council.

Program

To review and develop recommended Council positions on water quality and environmental standards and problems relating to the water resources of the Western United States.

Organization and Voting

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the State's delegates to the Council. Any Water Quality Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

Meetings

The Committee shall meet at the call of the Committee chairman.

Reports

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or the Executive Committee.

Charter Adoption

This Charter of the Water Quality Committee of the Western States Water Council was adopted by resolution on January 16, 1976 at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

WATER QUALITY COMMITTEE MEMBERS

Gary Broetzman - Colorado - Chairman
Calvin Sudweeks - Utah - Vice-Chairman

Bill Ross - Alaska
Sidney Woods - Arizona
Dave Kelley - California
Gene Gray - Idaho
Donald G. Willems - Montana
Joseph E. Dini, Jr. - Nevada

Denise Fort - New Mexico
Kip Lombard - Oregon
Fred Pfeiffer - Texas
Glen Fiedler - Washington
George Christopulos - Wyoming

Safe Drinking Water Act Subcommittee

Cal Sudweeks - Utah - Chairman

Gary Broetzman - Colorado

Don Willems - Montana



Across: Gary Broetzman, Don Willems, George Christopulos, Cal Sudweeks, Fred Pfeiffer, Kip Lombard, Glen Fiedler
Not Pictured: Bill Ross, Sidney Woods, David G. Kelley, Gene Gray, Joseph E. Dini, Jr., Denise Fort

RULES OF ORGANIZATION

Article I - Name

The name of this organization shall be "THE WESTERN STATES WATER COUNCIL."

Article II - Purpose

The purpose of the Western States Water Council shall be to accomplish effective cooperation among western states in planning for programs leading to integrated development by state, federal, and other agencies of their water resources.

Article III - Principles

Except as otherwise provided by existing compacts, the planning of western water resources development on a regional basis will be predicated upon the following principles for protection of states of origin:

- (1) All water-related needs of the states of origin, including but not limited to irrigation, municipal and industrial water, flood control, power, navigation, recreation, water quality control, and fish and wildlife preservation and enhancement shall be considered in formulating the plan.
- (2) The rights of states to water derived from the interbasin transfers shall be subordinate to needs within the states of origin.
- (3) The cost of water development to the states of origin shall not be greater, but may be less, than would have been the case had there never been an export from those states under any such plan.

Article IV - Functions

The Functions of the Western States Water Council shall be to:

- ~~(1)~~ Prepare ~~criteria in the formulation of plans for regional development of water resources to protect and further state and local interests:~~
- (1) ~~(2)~~ Undertake continuing review of all large-scale interstate and inter-basin plans and projects for development, control or utilization of water resources in the Western States, and submit recommendations to the Governors regarding the compatibility of such projects and plans with an orderly and optimum development of water resources in the Western States.
- (2) ~~(3)~~ Investigate and review water related matters of interest to the Western States.
- (3) Express policy positions regarding proposed federal laws, rules and regulations and other matters affecting the development and management of water resources in Western States.
- (4) Sponsor and encourage activities to enhance exchange of ideas and information and to promote dialogue regarding optimum management of western water resources.
- (5) Authorize preparation of amicus briefs to assist western states in presenting positions on issues of common interests in cases before federal and state courts.

Article V - Membership

- (1) The membership of the Council consist of not more than three

representatives of each of the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming appointed by and serving at the pleasure of the respective Governors. The States of Alaska and Hawaii, Nebraska, North Dakota and South Dakota shall be added shall be added to membership if their respective Governors so request.

- (2) Member states may name alternate representatives for any meeting.
- (3) Any state may withdraw from membership upon written notice by its Governor.
- (4) The Executive Committee of the Council may, by unanimous vote, confer the status of Associate Member of the Council upon states it deems eligible. Associate Membership will entitle a state to appoint two official observers to participate in Council activities and receive all printed material disbursed by the Council. Associate member states shall have no vote in Council matters. The Executive Committee shall, through regular Council voting procedures, establish the appropriate level of dues for Associate Member states. In addition to determinations concerning Associate member states, the Executive Committee may, when appropriate, establish fees for participation in Council activities by non-members.

Article VI - Ex-Officio Members

The Governors of the member states shall be ex-officio members and shall be in addition to the regularly appointed members from each state.

Article VII - Officers

The officers of the Council shall be the Chairman, Vice Chairman and Sec-

retary-Treasurer. They shall be selected in the manner provided in Article VIII.

Article VIII - Selection of Officers

The Chairman, Vice Chairman and Secretary-Treasurer, who shall be from different states, shall be elected from the Council by a majority vote at a regular meeting to be held in July of each year. These officers shall serve one-year terms but may not be elected to serve more than two terms consecutively in any one office.

Article IX - Executive Committee

- (1) Representatives of each state shall designate one of their members to serve on an Executive Committee which shall have such authority as may be conferred on it by these Rules of Organization, or by action of the Council. Any Executive Committee member may designate an alternate to serve in his absence.
- (2) The Council may establish other committees which shall have such authority as may be conferred upon them by action of the Council.

Article X - Voting

Each state represented at a meeting of the Council shall have one vote. A quorum shall consist of a majority of the member states. No matter may be brought before the Council for a vote unless advance notice of such matter has been mailed to each member of the Council at least 30 days prior to a regular meeting and 10 days prior to a special meeting at which such matter is to be considered; provided, that matters may be added to the agenda at any meeting by unanimous consent of those states represented at the meeting. In any matter put before the Council for a vote, other than election of officers, any member state may upon request obtain one automatic delay in the voting until the next meeting of the Council. Further delays in voting on such matters may be obtained only by majority vote. No recommendation may

be issued or external position taken by the Council except by an affirmative vote of at least two-thirds of all member states; provided that on matters concerning out-of-basin transfers no recommendation may be issued or external position taken by the Council except by a unanimous vote of all member states. On all internal matters; however, action may be taken by a majority vote of all member states.

Article XI - Conduct of Meetings

Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised. A ruling by the Chair to the effect that the matter under consideration does not concern an out-of basin transfer is an appealable ruling, and in the event an appeal is made, such ruling to be effective must be sustained by an affirmative vote of at least 2/3 of the member states.

Article XII - Meetings

The Council shall hold regular quarterly meetings at times and places to be decided by the Chairman, upon 30 days written notice. Special meetings may be called by a majority vote of the Executive Committee, upon 10 days written notice.

Article XIII – Limitations

The work of the Council shall in no way defer or delay authorization or construction of any projects now before Congress for either authorization or appropriation.

Article XIV - Amendment

These articles may be amended at any meeting of the Council by unanimous vote of the member states represented at the meeting. The substance of the proposed amendment shall be included in the call of such meetings.

PRINCIPLES - ~~STANDARDS~~ - GUIDELINES

PREAMBLE

The Constitution of the United States and the Constitutions of the individual States shall be adhered to in Western regional water planning and development.

This statement of principle reaffirms, expands and clarifies principles set forth in Article III, "Rules of Organization" of the Western States Water Council.

1.0 PRINCIPLES

1.1 Comprehensive regional planning, transcending political boundaries, is a major consideration in the maximum proper utilization of the water and related resources of the West. Development of those resources to meet all reasonable needs as they may arise is essential to the continuing prosperity of the region and each of its economically interdependent parts.

1.1.1 The planning process should include or supplement rather than supersede existing water resource developments; it should complement and strengthen local and state planning activities rather than displace them; it should result from cooperative effort of all agencies concerned.

1.1.2 The planning program should be aimed to achieve a reasonably equitable balance among all existing and potential uses of water, insofar as the supply available or to be developed will permit, consistent with established rights.

1.1.3 Water resources of the region should be put to beneficial use to the fullest practicable extent in an efficient manner in accord with the needs and types of use in the particular area and wasteful and inefficient practices or those that unnecessarily degrade water quality should be eliminated.

1.1.4 New uses of western water resources should make the most practical and efficient use of water resources and should minimize any necessary reductions in the quality of western water resources.

1.1.5 Water resource developments should be implemented when they are well planned, endorsed by local and state governments and provide for maximum social and economic benefits from the use of western water resources and integrate maximum use concepts with conservation, environmental enhancement and the preservation of natural resources.

1.1.6 The States should be the lead governmental body in the administration of water rights and in the preparation of statewide water plans so that wise use and best conservation practices can be assured.

1.1.7 It is imperative that all States, as openly developed which are flexible enough to permit modifications to meet changing long-term needs and advances in technology, yet specific enough to provide solutions for immediate water supply problems.

1.1.9 Water exploration studies shall include a thorough examination of efficiency of water use and cost-price relationships and a comprehensive economic evaluation that considers all costs and benefits accruing to the area of origin and costs and benefits accruing to the area of import. The economic analysis must include similar studies for alternative sources of supply. Aesthetic values shall be considered in over-all project evaluation.

1.1.10 Close cooperation and free-interchange of ideas and reporting of data on a uniform basis among all affected local, State and Federal interests, shall be sought.

1.1.11 Water resource planning shall consider water quality, as well as quantity.

1.2 Regional water planning should be designed to avoid interference with existing rights to the use of water. Any taking of land or water rights shall be governed by law of eminent domain. Interstate compact allocations shall be honored.

1.2.1 Any entity studying transfer of surplus water shall recognize the economic social, legal, political and ethical implications of the transfer on both the exporting and importing areas. Such entity must plan so as to assure social and economic growth and development, by either:

- (a) The return or replacement of the water exported to the area of origin; or
- (b) Providing equivalent beneficial programs acceptable to the area.

1.2.2 The rights to water of regions; states or individuals must be recognized and guaranteed through due process of law.

1.3 Except as otherwise provided by existing law, the planning of water resources development in the Western states shall be predicated upon the following principles for protection of and assistance to states of origin.

1.3.1 Interbasin or Interregional transfer of water shall contemplate only the transfer from the area of origin of those quantities of water deemed to be surplus. The States shall endeavor to agree upon determination of quantities of water that are surplus.

1.3.2 In making determination of possible surplus water, all water-related needs of the States and areas of origin bearing on environmental protection, economic prosperity and social well being shall be recognized.

1.3.3 All water requirements, present or future, for uses within the drainage area of any river basin, shall have priority and right in perpetuity to the use of the waters of that river basin, for all purposes, as against the uses of water delivered by means of such exportation works, unless otherwise provided by treaty, interstate agreement or compact.

1.3.4 The cost of water development to the States of origin shall not be greater, but may be less, than would have been the case had there never been an export from those States under any such plan.

1.3.5 In the study on interstate diversion, any interstatediversion project shall neither impede nor minimize the development of water resources in the state of origin, and shall result insubstantive net advantage to such State over the advantage it could have obtained, by itself or otherwise, without such diversion project.

1.3.6 All plans for interbasin diversion of water shall provide for such financial arrangements with the states of origin as may be necessary to comply with Section 1.3.4 and 1.3.5 above.

1.3.7 The exportation of water shall not change an area of origin from a water-rich to a water-deficient economy and shall not adversely affect the competitive position of the area of origin.

1.3.8 State or area of origin priority shall be explicitly set forth in all contracts for the use of imported water. Should such priority ever be denied, through subsequent action of the Congress, or otherwise, areas of origin will be entitled to just compensation .

1.3.9 Federal statutes designed to protect areas and states of origin, in any regional interstate plan of water development, should include the consent by the United States for any such state of origin to sue in the Federal Courts, to compel Federal officials to comply with such statutes and for such other relief as deemed equitable.

1.4 This statement of principles shall not be considered as any support or advocacy for the diversion of water from one river basin to another.

1.5 The public should be educated concerning the various and many uses of water and the wise and prudent management thereof. Sound water resource and related land management concepts and the needs and issues confronting the region and the nation should be disseminated. All means and possibilities of financing, development of, and implementing an education program should be explored.

~~2.0 STANDARD FOR GUIDANCE
IN THE FORMULATION OF CON-
CEPTS AND PLANS FOR STAGED
REGIONAL DEVELOPMENT OF
WATER RESOURCES.~~

~~2.1—A Western States water resource program shall be developed and maintained by the Western States Water Council through compilation and analysis of available state-wide plans and federal inter-basin and interstate plans, to provide a broad and flexible pattern into which future definite projects may be integrated in an orderly fashion.~~

~~2.2—A basic objective of the program is to provide a framework within which projects may be developed to meet the requirements for water to the extent feasible as and where they arise.~~

~~2.3—A determination of the advantages and disadvantages of alternate methods of meeting water needs should be included in the Western States water resource program.~~

~~2.4—In order to provide the uniformity necessary to facilitate compilation and analysis of the various state-wide water plans, it is recommended that such plans contain projects of usable water resources and an inventory of need for the years: 1980, 2000, 2020, 2040.~~

~~2.5—Each Member State should strive to complete, no later than June 30, 1977, a preliminary water plan, including estimates of water resources and estimates of current and long-range water needs.~~

~~2.0 3.0 GUIDELINES AND PROCE-
DURES FOR CORRELATION OF
PLANS AND SCHEDULES AMONG
WESTERN STATES~~

~~2.1 3.1 Interstate Exchange of Informa-
tion and Data.~~

~~2.1.1 3.1.1 When a state publishes reports or takes any action which may affect plans or objectives of other States, the affected States and the Western States Water Council staff should be furnished copies thereof.~~

Request for basic data and supporting information should be initiated by the state needing the data or information.

~~2.1.2 3.1.2~~ The request for the exchange of basic data and supporting information should be coordinated through one state agency.

~~2.1.3 3.1.3~~ The name, official position, address and telephone number of the designated state office will be forwarded to the Western States Water Council staff. The staff will prepare a consolidated list of designated offices and distribute copies to all States through the State's member of the Executive Committee, Western States Water Council.

~~2.1.4 3.1.4~~ The type of reports and actions which should be sent to other States and the Western States Water Council staff includes, but is not limited to copies of the following:

~~2.1.4.1 3.1.4.1~~ Summaries of current and long-range estimates of various types of water needs and usable water resources.

~~2.1.4.2 3.1.4.2~~ Planning schedules for developments of all large scale interstate and interbasin plans and projects.

~~2.1.4.3 3.1.4.3~~ State evaluation of programs such as weather modification, watershed management, groundwater recharge, desalination, and waste water reclamation.

~~2.1.4.4 3.1.4.4~~ Major legal and administrative decisions pertaining to water resources.

~~2.1.4.5 3.1.4.5~~ State or Federal legislation as proposed by any state materially affecting Western States water planning.

~~2.2 3.2~~ Correlation of Plans and Schedules.

~~2.2.1 3.2.1~~ A master list shall be prepared and maintained at the headquarters of the Western States Water Council of items furnished pursuant to Section 3.1 with copies to be furnished to member States at appropriate intervals.

ADDRESS AND PHONE NUMBERS

of WSWC Members and Staff

- ACORD, John E. (406) 444-6627
Assistant Administrator
Water Resources Division
Department of Natural Resources & Conservation
1520 East 6th Avenue
Helena, Montana 59620
- ANAYA, Toney (505) 829-3000
Governor of New Mexico
State Capitol
Santa Fe, New Mexico 87501
- ANDERSON, D. Larry (801) 533-5401
Director
Division of Water Resources
1636 West North Temple
Salt Lake City, Utah 84116
- ATIYEH, Victor (503) 378-3100
Governor of Oregon
State Capitol
Salem, Oregon 97310
- AYALA, Ruben (916) 445-6868
California Legislature
State Capitol, Room 2082
Sacramento, California 95814
- BABBITT, Bruce (602) 255-4331
Governor of Arizona
Statehouse
Phoenix, Arizona 85007
- BANGERTER, Norman H. (801) 533-5231
Governor of Utah
State Capitol
Salt Lake City, Utah 84114
- BELL, D. Craig (801) 521-2800
Executive Director
Western States Water Council
220 South 200 East, Suite 200
Salt Lake City, Utah 84111
- BROETZMAN, Gary (303) 320-8333
Director
Water Quality Control Division
Colorado Department of Health
4210 East 11th Ave., Room 320
Denver, Colorado 80220

- BROWN, Harold M..... (907) 465-3600
 Attorney General
 Department of Law
 P.O. Box K
 Juneau, Alaska 99811
- BRYAN, Richard (702) 885-5670
 Governor of Nevada
 State Capitol
 Carson City, Nevada 89701
- CHRISTOPULOS, George L. (307) 777-7354
 Wyoming State Engineer
 Herschler Building
 Cheyenne, Wyoming 82002
- DANIELSON, Jeris A. (Alt.) (303) 866-3581
 Colorado State Engineer
 1313 Sherman Street, Room 818
 Denver, Colorado 80203
- DEUKMEJIAN, George (916) 445-4711
 Governor of California
 State Capitol
 Sacramento, California 95814
- DINI, Joseph E., Jr. (702) 463-2868
 Nevada State Assemblyman
 104 North Mountain View
 Yerington, Nevada 89447
- DUMARS, Charles (505) 277-3130
 Professor of Law
 2021 Lakeview, S. W.
 Albuquerque, New Mexico 87105
- DUNN, A. Kenneth (208) 334-4440
 Director
 Department of Water Resources
 Statehouse
 Boise, Idaho 83720
- EVANS, John V. (208) 334-2100
 Governor of Idaho
 State Capitol
 Boise, Idaho 83720
- FERRIS, Kathy (602) 255-1553
 Director
 Department of Water Resources
 99 East Virginia
 Phoenix, Arizona 85004

- FIEDLER, Glen (206) 459-6168
 Acting Deputy Director
 Department of Ecology
 Mail Stop PV-11
 Olympia, Washington 98504
- FORT, Denise (505) 984-0020
 Director
 Environmental Improvement Division
 725 St. Michaels Drive
 Santa Fe, New Mexico 87503
- FRITZ, Gary (Alt.) (406) 444-6601
 Administrator
 Water Resources Division
 Department of Water Resources & Conservation
 32 South Ewing
 Helena, Montana 59620
- GARDNER, Booth (206) 753-6780
 Governor of Washington
 State Capitol
 Olympia, Washington 98504
- GETCHES, David H. (303) 866-3311
 Executive Director
 Department of Natural Resources
 1313 Sherman Street, Room 718
 Denver, Colorado 80203
- GRAY, Gene (208) 642-3388
 Route #1, Box 46-A
 Payette, Idaho 83661
- HAAS, Wayne T. (Alt.) (208) 334-4437
 Administrator
 Department of Water Resources
 Statehouse
 Boise, Idaho 83720
- HALLAUER, Wilbur G. (Alt.) (509) 476-2486
 P.O. Box 70
 Oroville, Washington 98844
- HANSEN, Dee C. (801) 533-5356
 Director
 Department of Natural Resources
 1636 West North Temple
 Salt Lake City, Utah 84116
- HERSCHLER, Ed (307) 777-7434
 Governor of Wyoming
 State Capitol
 Cheyenne, Wyoming 82001

- JENSEN, Dallin (Alt.) (801) 533-4446
 Attorney General's Office
 1636 West North Temple, Suite 300
 Salt Lake City, Utah 84116
- JOHNSON, Norman K. (801) 521-2800
 Legal Counsel
 Western States Water Council
 220 South 200 East, Suite 200
 Salt Lake City, Utah 84111
- KELLY, David G. (Alt.) (916) 445-7852
 Member of the Assembly
 State Capitol, Room 5164
 Sacramento, California 95814
- KENNEDY, David (916) 445-6582
 Director
 Department of Water Resources
 P.O. Box 388
 Sacramento, California 95802
- LAMM, Richard D. (303) 866-2471
 Governor of Colorado
 State Capitol
 Denver, Colorado 80203
- LOMBARD, Kip (503) 482-9729
 P. O. Box 1090
 Ashland, Oregon 97520
- MACINTYRE, Donald D. (406) 444-6699
 Chief Counsel
 Department of Natural Resources & Conservation
 1520 E. 6th Avenue
 Helena, Montana 59620
- MC DONALD, J. William (303) 866-3441
 Director
 Colorado Water Conservation Board
 1313 Sherman Street, Room 721
 Denver, Colorado 80203
- MONTFORD, John T. (806) 747-0467
 State Senator
 P.O. Box 1709
 Lubbock, Texas 79408
- NEMIR, Charles E. (512) 463-7847
 Executive Administrator
 Texas Water Development Board
 P.O. Box 13231, Capitol Station
 Austin, Texas 78711

- PFEIFFER, Fred (512) 227-1373
 General Manager
 San Antonio River Authority
 P.O. Box 9284
 San Antonio, Texas 78204
- PROCTOR, George (503) 882-4436
 Proctor & Puckett
 280 Main Street
 Klamath Falls, Oregon 97601
- REYNOLDS, S. E. (505) 827-6091
 New Mexico State Engineer
 101 Bataan Memorial Building
 Santa Fe, New Mexico 87501
- RHOADS, Willard C. (307) 587-3787
 Box 637
 Cody, Wyoming 82414
- RIGBY, Ray W. (208) 356-3633
 Attorney
 P.O. Box 250
 Rexburg, Idaho 83440
- RINIKER, Andrea Beatty (206) 459-6168
 Director
 Department of Ecology
 Mail Stop PV-11
 Olympia, Washington 98504
- ROE, Charles B., Jr. (206) 459-6169
 Senior Assistant Attorney General
 Temple of Justice
 Olympia, Washington 98504
- ROSS, BILL..... (907) 465-2600
 Commissioner
 Department of Environmental Conservation
 P.O. Box O
 Juneau, Alaska 99811
- SCHWINDEN, Ted (406) 444-3111
 Governor of Montana
 State Capitol
 Helena, Montana 59620
- SHEFFIELD, William (907) 465-3500
 Governor of Alaska
 Pouch A
 Juneau, Alaska 99811

- STOKES, Lee (Alt.) (208) 334-4061
 Administrator
 Department of Health and Welfare
 Division of Environment
 Statehouse
 Boise, Idaho 83720
- STONEHOCKER, Jack L. (702) 739-1902
 Director
 Colorado River Commission of Nevada
 Mailroom Complex
 Las Vegas, Nevada 89158
- SUDWEEKS, Calvin (Alt.) (801) 533-6146
 Director
 Bureau of Water Pollution Control
 Utah State Division of Health
 P.O. Box 2500
 Salt Lake City, Utah 84110
- WADDINGHAM, Thorpe A. (801) 864-5231
 Attorney
 P.O. Box 177
 Delta, Utah 84642
- WEISS, Wendy C. (Alt.) (303) 866-3611
 Colorado Department of Law
 1525 Sherman Street,
 Denver, Colorado 80203
- WESTERGARD, Roland D. (702) 885-4360
 Director
 Department of Conservation and Natural Resources
 201 South Fall Street
 Carson City, Nevada 89701
- WHITE, Mark (512) 463-2000
 Governor of Texas
 State Capitol
 Austin, Texas 78711
- WHITE, Warren G. (307) 777-7574
 State Planning Coordinator's Office
 Herschler Building, Second Floor East Wing
 Cheyenne, Wyoming 82002

- WILLARDSON, Anthony G. (801) 521-2800
 Associate Director
 Western States Water Council
 220 South 200 East, Suite 200
 Salt Lake City, Utah 84111
- WILLEMS, Donald G. (406) 444-3948
 Administrator
 Environmental Sciences Division
 Department of Health & Environmental Sciences
 Capitol Station
 Helena, Montana 59620
- WOODS, Sidney (602) 783-7887
 President
 The Woods Company
 P.O. Box 190
 Yuma, Arizona 85364
- WUNNICKE, Esther C. (907) 465-2400
 Commissioner
 Department of Natural Resources
 Pouch M
 Juneau, Alaska 99811
- YOUNG, William H. (503) 378-2982
 Director
 Water Resources Department
 3850 Portland Road, NE
 Salem, Oregon 97310

