



**POSITION  
of the  
WESTERN STATES WATER COUNCIL  
regarding  
STATES' WATER RIGHTS AND NATURAL FLOWS  
Coeur d'Alene, Idaho  
October 26, 2018**

**WHEREAS**, the Western States Water Council strongly supports preservation of the States' inherent right to develop, use, control, and distribute water; and

**WHEREAS**, States have exclusive authority over the allocation and administration of rights to the use of surface water located within their borders and are primarily responsible for protecting, managing and otherwise controlling the resource; and

**WHEREAS**, States are in the best position to protect and allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances; and

**WHEREAS**, the Flood Control Act of 1944 specifically declared the policy of Congress to recognize the interests and rights of the Missouri River Basin States in determining the development of the watersheds within their borders and likewise their interests and rights in water use and control, and to preserve and protect to the fullest extent established and potential uses of the rivers' natural flows, those flows being the natural flows that would pass through the states in the absence of the U.S. Army Corps of Engineers dams; and

**WHEREAS**, the federal government has long recognized the right to use water as determined under the laws of the various states; and

**WHEREAS**, the various states have the authority and duty to manage permitting of stored water to supplement natural flows; and

**WHEREAS**, federal agencies in the western states, such as the Bureau of Reclamation, generally recognize western water laws and natural flows through reservoir operations, with releases from storage that supplement natural flows, and water service contracts that supplement natural flow; and

**WHEREAS**, representatives of the U.S. Army Corps of Engineers have indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the U.S. Army Corps of Engineers without recognition of the States' rights to natural flows being separate from the captured floodwaters stored within those reservoirs; and

**WHEREAS**, in its Proposed Rule on Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply (81 FR 91556) the Corps asserts that its contracting authority over surplus waters was intended by Congress to include “withdrawals that could potentially have been accommodated from the natural flow of the river had the reservoir never been constructed” (at 91565).

**NOW, THEREFORE, BE IT RESOLVED**, that the Western States Water Council urge the Army Corps of Engineers to recognize the legal right of the States to the development, use, control, distribution and allocation of the States’ surface waters, including natural flows.

**BE IT FURTHER RESOLVED**, that any policy of the U.S. Army Corps of Engineers to require storage contracts to access natural flows within a reservoir boundary would be a violation of the States’ rights to develop, use, control, and distribute surface water.

**BE IT FURTHER RESOLVED**, that the Western States Water Council opposes any and all efforts that would diminish the primary and exclusive authority of States over the allocation of surface water.

*\*Nebraska abstained from voting on the position in October 2012.*