

2016 COLORADO WATER CONGRESS POLICIES

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GENERAL POLICY OBJECTIVE

The Colorado Water Congress (CWC) exists to support active leadership and necessary funding for the formulation, development, construction, and operation of water resource development projects required for beneficial use by the people of Colorado and for protection of Colorado's water resources. The mission of the CWC is to provide leadership on key water resource issues and to be the principal voice of Colorado's water community.

STATE POLICY ISSUES

I. STATE WATER POLICIES & PRINCIPLES

The CWC supports Colorado's Constitution as the framework of a State water policy and land legislative policy.

II. GROWTH AND WATER RESOURCES

The CWC:

- A. Opposes the use of water as a growth control tool.
- B. Supports efforts to meet the long-term demands of population growth in a manner that minimizes reallocation of water from existing beneficial uses.
- C. Supports identification of sustainable water supplies for future growth.
- D. Supports the need for ongoing water planning efforts.

III. INTERSTATE COMPACTS

The CWC:

- A. Supports protection of Colorado's lawful share of water under the nine interstate water compacts.
- B. Believes that water apportioned pursuant to interstate compacts is held by the individual states in the amount apportioned by the compacts and the law of the river.
- C. Supports collection and preservation of such data and other information as may be necessary to effectively determine and protect Colorado's compact apportionments.

IV. WATER CONSERVATION PROGRAM

The CWC:

- A. Supports water conservation planning and implementation by all water users and the careful management of the state's water resources.

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- B. Opposes federalization of water conservation programs, with special reference to attempts to reallocate water resources through federal mandates.

V. PUBLIC TRUST DOCTRINE

The CWC opposes establishment of a public trust doctrine as the means of allocating and administering water in Colorado. Colorado's prior appropriation doctrine has proven its ability to adapt, accommodate, protect, and balance water for consumptive use, recreation and environmental purposes. The public trust doctrine conflicts with the prior appropriation doctrine, and should be vigorously opposed both locally and statewide.

VI. WATER TRANSFERS WITHIN COLORADO

The CWC:

- A. Supports movement of water to places of beneficial use consistent with existing legal principles and a free market in water.
- B. Supports collaborative water supply efforts that provide benefits to multiple parties, including contributing and receiving watershed.
- C. Promotes the use of alternative water transfer methods that minimize the impacts of temporary water shortages, while allowing for the maintenance of the original water use.

VII. APPOINTMENTS TO STATE BOARDS AND COMMISSIONS

The CWC urges the legislature and the governor of the State of Colorado to ensure that appointments to State Boards and Commissions and the confirmation process are timely, statutorily sound, and result in the selection of well qualified individuals.

VIII. ENDANGERED AND DECLINING SPECIES

The CWC supports funding and other efforts for the preservation of critical habitat and the reduction of adverse impacts on threatened and endangered species caused by non-native species. The CWC also supports the State of Colorado's participation in federal endangered species cooperative agreements and recovery programs and therefore urges continued funding for such programs as appropriate.

IX. CONSTITUTIONAL REFORM

The CWC supports an amendment to the Constitution of the State of Colorado that would require a greater level of voter support for changes thereto prior to any further amendment thereof.

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X. ADEQUATE APPROPRIATIONS FOR STATE AGENCIES

The CWC supports sufficient appropriations and adequate fee-based revenue to permit the State of Colorado to continue water resources administration, protection, development and conservation.¹

XI. INFRASTRUCTURE

The CWC supports the development of cost effective and efficient permitting processes as applied to water projects, both consumptive and non-consumptive.

The CWC urges consideration of an amendment to the Colorado Constitution that:

- A. Allows the State to incur debt to finance the rehabilitation, protection and construction of necessary water-related infrastructure.
- B. Provides assurances that any funds raised by state bonding authority will inure to the benefit of citizens of the State.

XII. WATER PROJECT FUNDING

The CWC:

- A. Supports legislation and appropriations that maximize the ability of water funding entities such as the Colorado Water Conservation Board and Colorado Water Resources and Power Development Authority to finance water projects.
- B. Opposes legislation or constitutional proposals that would negatively impact the fiscal stability of public water supply entities and/or their ability to finance water projects.

FEDERAL POLICY ISSUES

I. PROTECTION OF STATE WATER INTERESTS

The CWC urges:

- A. Members of the Colorado Congressional delegation to oppose any proposed federal law and any administrative action relating to federal law that would impede or impair the allocation and beneficial use of the waters of the State of Colorado, pursuant to the laws of the state and rights established thereunder.
- B. Congress to adopt clarifying provisions in all environmental legislation, including the reauthorization for the Clean Water Act, that recognize the importance of water use and development to the economic well-being of the people in the water-short areas of the West and to reconfirm the intent of Congress that state law shall control and determine the allocation of all water use within the states.
- C. Congress and federal agencies, in adopting and implementing federal programs, to respect local land use decision making authority and avoid federal intrusions into state and local control of water resources.

¹ In regard to what constitutes 'adequate' and/or 'sufficient' funds or appropriations as used in this policy, it shall be the responsibility of the CWC Committees to determine what amounts constitute 'adequate' and 'sufficient' funds. Furthermore, CWC Committees shall determine the prioritization of efforts by CWC on behalf of the above state agencies.

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II. SAFE DRINKING WATER

The CWC strongly endorses the continuing effort to keep drinking water safe and to that end urges state and federal legislators to:

- A. Support safe drinking water programs and protection of public health.
- B. Support reasonable regulations calculated to encourage safe drinking water including standard-setting for contaminants that takes into account local conditions in assessing health risks.
- C. Re-examine Safe Drinking Water Act (SDWA) regulations where the costs of meeting such regulations outweigh the benefits of the regulation.
- D. Ensure that no contaminant level is established or standard adopted unless it is based on proven science including generally-accepted statistical methods.
- E. Encourage Congress to continue to appropriate federal money to the state safe drinking water revolving loan fund in order to accomplish the purposes and goals of the program developed pursuant to the SDWA.
- F. Encourage the Environmental Protection Agency (EPA) to permit the use of the State Revolving Fund for the purchase of water rights and the rehabilitation of dams and reservoirs as eligible activities.

III. CLEAN WATER ACT REAUTHORIZATION

The CWC urges Congress and the Administration to incorporate the following principles in the reauthorization of the Clean Water Act:

- A. Federal jurisdiction over waters should continue to be based upon a Commerce Clause connection, and not be expanded under amendments to, or administrative interpretations of, the Act.
- B. No provision of the Act or any agency interpretation thereof shall abrogate or impair states' water allocation systems nor impair water rights allocated under state law.
- C. The transfer of water from one water body to another water body for a beneficial use without it being subjected to an intervening industrial, municipal, or commercial use does not require the issuance of a point source discharge permit.
- D. The appropriate means for the control of nonpoint sources of pollution is the use of reasonable, voluntary, best management practices; as identified and adopted by the states pursuant to the provisions of §319 of the Clean Water Act.
- E. With reference to §404 of the Clean Water Act, the following should apply:
 - a. Accept local determinations of water project purpose and need.

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- b. An analysis of practicable alternatives should allow offsets for environmental mitigation and consider project benefits in determining the least environmentally damaging alternative.
 - c. EPA should not have authority to veto permits issued under this section.
- F. Federal review of water quality standards or of state triennial review or permit decisions does not constitute a 'federal action' requiring consultation under the Endangered Species Act.
- G. Allowance for the adoption of classifications and standards based upon site specific conditions, with specific reference to ambient and unique conditions found in the arid west.
- H. Continuation of funding for the state water pollution control revolving loan fund to accomplish the goals and purposes thereof.
- I. A presumption that state-established water quality standards and other state actions taken pursuant to the provisions of the Clean Water Act, including the identification of impaired waters and the establishment of Total Maximum Daily Loads (TMDLs), are in compliance with the Act.
- J. Acknowledge that so long as herbicides and pesticides are approved for use under Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and utilized in accordance with label directions, it should not be necessary to obtain a National Pollutant Discharge Elimination System (NPDES) permit for vector control or the control of weeds or other aquatic nuisances in reservoirs or along ditches or other similar water bodies where such chemicals may enter the water.

IV. CLEAN WATER ACT IMPLEMENTATION

The CWC urges that in the implementation of the Clean Water Act, state and federal agencies:

- A. Act in a manner consistent with interstate compacts and state water allocation procedures and rights decreed thereunder.
- B. Recognize that hydrologic modifications should not be considered pollutants or pollution.
- C. Use sound science, risk assessment principles, and cost/benefit analysis in program implementation.
- D. Acknowledge that Endangered Species Act §7 consultation requirements are not triggered by the issuance of a discharge permit, the adoption of state water quality standards, or the review of existing standards by the EPA.
- E. Honor states' authority in the adoption of designated uses and criteria based upon site specific stream conditions.
- F. Encourage continued federal funding of the state water pollution control revolving loan fund.

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- G. No provision of the Act or any agency interpretation thereof shall abrogate or impair states' water allocation systems nor impair water rights allocated under state law.
- H. Recognize that the transport of water from one water body to another water body does not constitute the addition of pollutants from a point source.

V. FEDERALLY IMPOSED FLOW REQUIREMENTS

The CWC urges:

- A. Congress and the courts to clarify that federal agencies have no authority to demand or require the bypass of decreed water or to acquire any in stream flow or otherwise interfere with decreed and beneficial uses of water in Colorado.
- B. The federal government and others not to use the CWCB in stream flow appropriation as the basis for the imposition of a bypass flow below a reservoir in excess of the reservoir's release requirement as established in accordance with state water law.

VI. WILD AND SCENIC RIVERS

The CWC urges Congress to amend the Wild and Scenic Rivers Act as follows:

- A. To require concurrence of the legislature in the state in which the segment of said river to receive designation as Wild and Scenic is located.
- B. To assure that the Wild and Scenic Rivers Act does not interfere with present or future beneficial uses of water or water rights allocated by the state.
- C. To place a three-year limit on the amount of time an agency has to conduct a Wild and Scenic study of a river and make a recommendation to Congress.
- D. To place a three-year limit, beginning on the date Congress receives a Wild and Scenic recommendation, for Congress to formally approve a recommended Wild and Scenic designation. Should Congress not act in the three-year time period, the river will no longer be managed by federal agencies as if it had received Wild and Scenic river designation.

VII. WILDERNESS AND FEDERAL RESERVED WATER RIGHTS

The CWC opposes:

- A. Legislation that would create additional wilderness, national conservation or national recreation areas, national wildlife or other federal reservations of land in the State of Colorado unless it disclaims federal reserved water rights or otherwise accommodates, and pays due deference to, the water needs and interests of all Colorado citizens.
- B. Any attempt to affirm wilderness reserved water rights through litigation.

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- C. Any designation of downstream wilderness unless there is adequate assurance of protection of upstream water rights and of reasonably foreseeable water needs wherever they may arise.

VIII. ENDANGERED SPECIES ACT REAUTHORIZATION

The CWC supports balanced legislation reasonably protective of endangered species and their habitats. Any reauthorization of the Endangered Species Act or administrative reforms should incorporate the following concepts:

- A. Actions and policies that protect habitat and recover species, while providing a measure of certainty to property owners, should be encouraged, including those which provide for incentives prior to species listing.
- B. Sound scientific data and scientific peer review should be required to support species listings, critical habitat designations and biological opinions.
- C. Listing and habitat decisions should be made with the assistance of coalition of all stakeholders who should be provided information regarding the basis for listing.
- D. The economic and social consequences of listing, and recovery and other alternatives to listing should be considered.
- E. Any in stream flows to preserve the natural environment to a reasonable degree, including flows for endangered species, must be obtained pursuant to state law and held by the CWCB.
- F. Only after all issues noted in A, B, C, D of this section are all satisfactorily met, should, as an action of last resort, any taking of a water right be considered. Any taking of water rights must be accompanied by fair and timely compensation.
- G. Future species recovery programs should be primarily paid for by the federal government with cost-sharing arrangements and not by individual states or project proponents.
- H. Mandate the establishment of criteria for species recovery, including identified species recovery numbers.
- I. If a species cannot be recovered within a reasonable time, with prudent effort, in an area of critical habitat, then that area should be removed from the critical habitat designation.
- J. Critical habitat designation should be subject to the National Environmental Policy Act (NEPA) review process.
- K. All directly affected parties should have standing to challenge actions taken under the Act.
- L. The U.S. Fish and Wildlife Service should defer to local determinations in the development and approval of Habitat Conservation Plans (HCP's).

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IX. RECOVERY IMPLEMENTATION PROGRAMS

The CWC:

- A. Supports appropriations by Congress and State Legislatures in Colorado, Wyoming, Utah, and New Mexico and the Upper Colorado River Basin and San Juan River.
- B. Supports basin recovery implementation programs pursuant to cost sharing arrangements agreed to among the states and the federal government, as embodied in Public Law 106-392, the federal authorizing legislation for these two programs.
- C. Urges the Colorado Parks and Wildlife Commission to manage Colorado's wildlife by implementing an aggressive and comprehensive program for the reduction of adverse impacts caused by non-native fish species in Colorado.
- D. Urges the Colorado Parks and Wildlife Commission to continue in its efforts to implement an aggressive program of the propagation and augmentation of endangered fish species populations in Colorado so as to promote stable populations and the recovery and delisting of such species.

X. COLORADO RIVER OPERATIONS

The CWC urges:

- A. Congress not change the law of the Colorado River or to modify the operation of Lake Powell in any manner that would limit the ability of the Upper Colorado River Basin to use its full Colorado River Compact entitlement, reduce power production, increase the costs of power, or reduce Colorado's share of power revenues from Colorado River Basin projects.
- B. That Colorado maintain its position to fully protect in perpetuity, Colorado's share of water under the compact and ensure that the lower basin states abide by the limitations upon water use set forth in the compact.
- C. The State of Colorado and its agencies to work cooperatively and proactively with water supply entities and federal agencies in all studies of water availability under the Colorado River Compact, options available should a shortage be declared, and the administration of any shortage criteria.
- D. Support for voluntary programs designed to forestall or ameliorate the impacts of current and projected water shortages.

XI. DAM REMOVAL

The CWC opposes any effort to breach or remove Colorado Water River Storage Project dams or drain associated reservoirs.

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XII. ENVIRONMENTAL IMPACT STATEMENT DELAY

The CWC urges all federal, state and local agencies involved in the preparation or review of environmental impact statements relating to water resource development projects to accelerate and coordinate the preparation and review of any necessary environmental impact statement.

XIII. CLIMATE VARIABILITY

Should state, local, or federal agencies adopt adaptive management programs in response to sound scientific findings on climate variability impacts, the Colorado Water Congress urges those agencies to:

- A. Recognize and respect interstate compact water allocations and delivery obligations.
- B. Encourage the use of storage and other risk response measures identified by water purveyors to foster the future reliability of water supplies.
- C. Acknowledge the need to interpret and/or modify guidance and regulations in such a manner which appropriately responds to new hydrologic and temperature conditions and their impact on the environment.

XIV. PROTECTION OF SOUND SCIENCE AS IT RELATES TO WATER RESOURCE MANAGEMENT

The CWC:

- A. Recognizes the importance of continuing to collect robust data on stream flows, snowpack, groundwater, precipitation and water quality and to continue to maintain and improve the collection and analysis tools for water supply management and administration, public safety, economic development, infrastructure planning and environmental commitments.
- B. Supports legislation and appropriations that provide sufficient funding for the maintenance, development, uninterrupted operation, technical refinement, improvement and efficient use of existing and new data collection systems and analysis tools.
- C. Supports data collection and scientific research needed to develop programs that reduce disaster impacts and enhance the sustainability of our communities, our economies and our ecosystems.
- D. Encourages its members, the legislature, and the Colorado Water Conservation Board to allocate the financial resources necessary to continue all current data collection and monitoring systems and to develop new systems as needed to provide the up to date data upon which the water community relies.