

2016 Supporting Position Statements
To Accompany the 2016 Resolutions of the
Colorado River Water Users Association

Adopted by the Resolutions Committee
At their Meeting on December 16, 2015
In Las Vegas, Nevada

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

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Introduction to CRWUA’s Position Statements To Accompany the 2016 Resolutions

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

The CRWUA’s resolutions advocate sound public policy positions that maximize beneficial consumptive use of the available water supply while appropriately conserving important environmental resources, promote storage to ameliorate drought conditions, support generation of electrical power at the many hydroelectric plants at the major federally constructed reservoirs in the River Basin and preserve the rights and prerogatives of the seven states through which the 1200-mile long river flows.

In short, CRWUA’s resolutions address local, state, regional, national, tribal and international relationships among the many interdependent parties who rely on this internationally critical water supply. The resolutions are addressed to, among others, national, local and state governments and nongovernmental organizations. Position statements framing the pertinent issues and justifying and expanding upon the resolution accompany each resolution. The full text of each position statement and resolution can be quickly and conveniently accessed on the Association’s website: <http://www.crwua.org/Resolutions.aspx>.

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COLORADO RIVER WATER USERS ASSOCIATION

2016 Position Statements

To Accompany the Association's Adopted 2016 Resolutions

Position Statement - *Endangered Species Act* - (Resolution No. 2016-1)

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

The Colorado River Water Users Association (CRWUA) Supports Re-Authorization and Necessary Reform of the ESA

CRWUA supports implementation, reauthorization and reform of the ESA to provide consistent and reasonable conservation of endangered species. The Act must produce results that balance species conservation and recovery with the needs of people. That this is possible is demonstrated by the cooperative conservation partnerships CRWUA members are already involved in, including the Upper Colorado River Endangered Fish Recovery Program, the Lower Colorado River Multi-species Conservation Program, and the San Juan River Basin Recovery Implementation Program. We need a new 21st century ESA that is consistent with these cooperative efforts.

Recognizing the need to prioritize, CRWUA is focused on three goals: 1) increasing the role of the states and tribes; 2) streamlining the Act; and 3) increasing certainty and direct involvement for landowners and water users.

Reauthorization of the ESA must include reforms to strengthen the role of the states in listing decisions, critical habitat designations, recovery planning, habitat conservation plans, "safe harbor" agreements and more. Alternatives to the rigid, ESA-mandated listing and federal recovery planning regulations are desperately needed. Cooperative agreements providing authority for states, tribes and involved entities to initiate threatened and endangered species conservation programs should be encouraged. These agreements should include provisions and incentives giving certainty to those who undertake conservation measures in exchange for incidental take authorizations. Cooperative species conservation actions, including candidate species conservation agreements, should be given preference in lieu of ESA species listings. The ESA should provide authority to initiate species conservation plans in advance of listing. If implemented, these plans should provide automatic incidental take permits upon subsequent listing as a means to provide meaningful landowner incentives - and thus enhance opportunities

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

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

The ESA Does Not Create Federal Water Law or Federal Rights to Water

The ESA should not be construed or used to impair, abrogate, supersede, amend or reallocate vested water rights granted by federal law or the respective states for beneficial uses; including the rights of contractors to use water pursuant to valid contracts with the Bureau of Reclamation (Reclamation). The same is true as to the rights of Indian tribes established by treaty, statute, settlement or decree and for water apportionments made by interstate compact or U. S. Supreme Court decree. Existing historical water uses and depletions and operation, maintenance and repair of existing water storage, diversion and conveyance facilities should be exempt from the ESA. The federal government should not acquire land or water, except on a willing seller/willing buyer basis consistent with applicable substantive and procedural law, nor should it impair the right to receipt and/or delivery of water within a Reclamation project under existing water storage, repayment or water service contracts.

Current Procedures for the Designation of Critical Habitat Create Disincentives for Species Recovery

In 30-plus years of implementing the ESA, the United States Fish and Wildlife Service has found that the designation of critical habitat provides little additional protection to most species while consuming significant amounts of conservation resources and furnishing landowners with negative impressions. America’s farmers, ranchers and private property owners have the most important role in saving endangered species as 90 percent of endangered species in the U.S. have habitat on private land. Research has shown that the current “up-front” and inflexible ESA critical habitat designation procedures have created disincentives for species recovery, rather than improving their plight.

A combination of factors has distorted the structure under which critical habitat was designed to function. The ESA currently requires agencies to designate critical habitat at the same time a species is listed as endangered or threatened. Designation of critical habitat should be made at or after the recovery planning stage, when there is sufficient information available to decide what habitat is essential for conservation of the species. Critical habitat designations should be made based on sound science and should be narrow, specific and precisely define the included areas. Areas of unoccupied habitat should be excluded unless sufficient information identifies it as truly essential for the species.

Areas covered by habitat conservation plans (HCPs) that include measures for preservation of a

protected species' habitat should automatically be excluded from critical habitat designations. No designation of critical habitat should occur within areas where an "ecosystem management approach" has been adopted to manage resources to facilitate species recovery and avoid listings. In these cases, the designation of critical habitat causes unnecessary, time-consuming, and costly review of existing management plans with no increase in the protection provided for endangered species. Providing statutory "no surprise" assurances for HCPs and Section 7 consultations affecting non-federal parties would encourage public acceptance and involvement in these permitting programs.

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

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

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

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

Listing and Delisting Procedures Need Significant Improvements

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

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

Decisions to list or delist species, designate or rescind critical habitat, and approve recovery plans should be made by the Secretary of the Interior (Secretary) in a timely manner, after independent review of the record, only after appropriate consultation with the Governor or Governors of the state or states impacted by the decision, affected Indian tribes, and after a public hearing in the affected area upon receipt of a petition therefore by an interested party.

Individuals or entities whose property or economic interests may be adversely impacted by ESA actions should have standing as parties in ESA litigation and should have "applicant" status in Section 7 consultations.

The Act should provide for periodic review of species listings, critical habitat designations, and recovery plans to determine if such actions continue to be necessary or appropriate for the continued existence of a species. An administrative process to evaluate the down-listing and delisting of species should be started when the quantitative goals and targets of a recovery plan are met. The Secretary should be given the flexibility to down-list or delist species along state geographic boundaries, when recovery goals within a state or regional recovery program consistent with the purposes of the ESA have been met.

Current ESA Funding is Inadequate to Accomplish ESA's Purposes

ESA funding at the federal and state levels must increase significantly to address the growing list of threatened and endangered species. Existing levels of expenditures to meet the need to protect species and their habitat are inadequate, particularly as state and federal agencies increasingly assume ESA management activities and embrace ecosystem management strategies. Inadequate funding remains a tremendous impediment to the ESA and is the direct cause of burdens being unfairly placed on local communities and owners of private property.

Contractors In Reclamation Projects Should Be Granted Applicant Status in Section 7 Consultations

The ESA provides "applicants" for federal permits or licenses with certain rights related to the Section 7 consultation process between the federal permitting/licensing agency and the Fish and Wildlife Service or National Marine Fisheries Service. Reclamation project contractors must be given recognition as "applicants" for any ESA Section 7 consultation that involves the operation of the project, regardless of whether that consultation involves the renewal or issuance of water service contracts.

Furthermore, the role of applicants in the Section 7 consultation process should be strengthened. Currently, the Section 7 process is treated as a consultation between two federal agencies that largely excludes input from affected non-federal parties. The exclusion of Reclamation project participants from direct involvement in such consultations only encourages their resort to judicial review of biological opinions as the only effective means to have their voices heard. Providing a direct role for Reclamation contractors would establish an improved consultation process with greater scientific and commercial data available that should improve the resulting biological opinions and reduce the need for litigation.

Congress declared that its policy is for federal agencies to cooperate with State and local agencies in resolving water resource issues in concert with conservation of endangered species. (16 U.S.C. § 1531(c)(2).) It is time for Congress to make this policy an enforceable right by water agencies to fully participate in Section 7 consultations alongside federal agencies.

Position Statement - *Invasive Species Management* - (Resolution No. 2016-2)

Invasive species are one of the most significant threats to native ecosystems in the nation. As defined by Federal Executive Order 13112 (1999), a species is considered invasive if it is not native to the ecosystem under consideration, and its establishment causes or is likely to cause economic, environmental or human harm. Large efforts are underway to fund, develop and implement early detection, monitoring, education, control, and eradication programs to control, manage and hopefully eradicate invasive plant and animal species. Many of the invasive species that are causing substantial damage were imported for ornamental landscaping, as a result of international commerce, from recreational activities, or by accident. Often these introduced species thrive and multiply in their new habitat due to fewer disease or natural limiting factors and do so to the detriment of native species and ecosystems. Controlling established invasive species is costly and difficult, and complete eradication is extremely difficult. In addition to the environmental damage, these invasive species can impose enormous costs to control or eradicate.

Preventing invasive species from becoming established can be more cost effective than restoring an injured ecosystem. Prevention can avoid the potentially permanent species losses that may result from a pest invasion. For instance, nearly half of the species currently listed as threatened or endangered under the ESA are in jeopardy primarily due to invasive species. Initial changes in ecosystem processes and interactions may be undetectable, depending upon the specific species, prior to devastating impacts of invasions.

Zebra and quagga mussels are among the most devastating invasive aquatic species to invade North American fresh waters. The mussels first arrived from Europe in the 1980's and spread to many water bodies in the eastern and midwestern United States and have now been found in a number of western states. The arrival of these mussels in a region creates severe ecological and economic impacts because, once established, the mussels can clog water intake and delivery pipes, infest hydro power infrastructure, adhere to boats and pilings, foul recreational beaches, and damage and forever change fisheries.

Invasive non-native plant species like Arundo, Giant Salvinia, Hydrilla, Phragmites, Russian Olive, and Saltcedar choke waterways, reduce flood carrying capabilities, alter riparian morphology and soak up scarce water supplies, all to the detriment of native species. These invaders undermine ecosystem protection and restoration in sensitive watersheds throughout the West. The Colorado River Water Users Association urges federal and state agencies, regional and local governments, and individual citizens to work together in concert to prevent invasive species from becoming established and to implement timely, efficient and cost-effective programs for education, detection, monitoring, control and eradication of invasive species.

Existing laws, such as the Lacey Act, were drafted to address the interstate trade in non-native species without considering the impact on western water supply systems that often involve the transport of water from interstate rivers for use throughout arid regions of the West. Congress should add protections to ensure that invasive species laws are not used to disrupt public water supplies or restrict operations of public water supply systems.

Position Statement - *Reclamation's Water and Power Facilities* - (Resolution No. 2016-3)

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

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

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

The water supply infrastructure in the West should be used to the maximum benefit of the nation. Seven of the ten fastest growing cities of the nation are in the West, and this growing population requires an adequate water supply. Additional water storage is essential to meet the growing demand for water in a "fast growing" region.

Water transfers play a vital role in water supply. The federally constructed water infrastructure of the Colorado River Basin provides opportunities for meeting supply challenges. CRWUA urges the Department of the Interior and Reclamation to exercise their maximum legal authority

to facilitate appropriate water supply and water transfer projects.

Reclamation should do its utmost to manage reservoir conservation storage to avoid or minimize shortages on the Colorado River and maximize power generation benefits, in accordance with the laws, operating criteria and guidelines governing the respective reservoirs' operation.

Position Statement - *Colorado River Salinity Control* - (Resolution No. 2016-4)

The Colorado River provides important water supplies for about 33 million Americans in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Nearly 4 million acres are irrigated with Colorado River system water in the United States. The Colorado River also serves about 3 million people and half a million acres of irrigated farmlands in Mexico. The reduction in salinity associated with the Program is estimated to provide hundreds of millions of dollars of benefit to agricultural, municipal and industrial Colorado River water users. The Colorado River Basin Salinity Control Act (CRBSCA) (PL 93-320) provides the means for the United States to meet the national water quality obligation to Mexico established in 1972 by Minute 242 of the International Boundary and Water Commission (IBWC) and to maintain the Basin-wide water quality standards adopted by the seven Colorado River Basin States (Basin States) and approved by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Clean Water Act. It is essential that funding for the Colorado River Basin Salinity Control programs as contained within the budgets of the Bureau of Land Management, Bureau of Reclamation and the United States Department of Agriculture (USDA) be appropriated.

The Basin States and their tribal and non-tribal water users have consistently worked with the executive, legislative and judicial branches of the federal government to assure a fair and effective allocation of the Colorado River's water supply within the terms of the Law of the River. Preserving the Basin States' abilities to develop their apportioned water supplies necessitates maintenance of the Basin-wide water quality standards for salinity. At current salinity levels, the economic damages from high salinity currently experienced by municipal, industrial and agricultural users of Colorado River water in the U.S. are estimated to be several hundred million dollars per year.

In 1974, Congress enacted the CRBSCA to implement the 1973 salinity agreement with Mexico as well as a program for controlling Colorado River salinity levels within the United States in accordance with the Basin-wide water quality standards for salinity. In 1984, PL 93-320 was amended to authorize a new voluntary, cost-shared, on-farm salinity control program by the USDA and to develop a comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management. In 1995, Congress enacted PL 104-20, which provides Reclamation with programmatic authority to initiate new federal and non-federal salinity control measures. In 1996, the USDA's program was combined with three other federal programs into the newly created Environmental Quality Incentives Program (EQIP) by the Federal Agriculture Reform and Improvement Act (PL 104-127). In 2000, PL 106-459 amended the Colorado River Basin Salinity Control Act to increase the appropriation ceiling for the Reclamation's programmatic authority by \$100 million. In 2002,

Public Law 107-171 reauthorized EQIP under which the Secretary of Agriculture carries out salinity control measures. Section 2806 of the Food, Conservation and Energy Act of 2008 (PL 110-246), often referred to as the “Farm Bill” created the Basin States Program expressly authorizing salinity control practices using Basin Funds. Congress adopted the latest Farm Bill last year. Known as the “Agricultural Act of 2014,” implementation of salinity control measures will be carried out through EQIP.

Pursuant to the CRBSCA, repayment to the Federal Treasury has been made from the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund (with hydropower revenues being the source of Basin Fund monies) for about 25 percent of the Reclamation and USDA salinity control program expenditures. Since 1996, upfront cost-sharing, allowing leveraging of Upper and Lower Basin funds with appropriated and EQIP funds to accomplish additional salinity control measures, has been occurring as authorized by the CRBSCA amendments. In addition, farmers participating in the USDA component of the Program share in the costs of implementing the salinity control measures.

In recognition of the Congressional inclusion of USDA's Colorado River Basin Salinity Control Program (Program) in the Environmental Quality Incentives Program (EQIP) of PL 104-127, the USDA should take all necessary steps to ensure that salinity control proposals receive adequate funding under EQIP. The Administration must request and Congress must appropriate sufficient funding for the Colorado River Basin Salinity Control Program to Reclamation and to the Bureau of Land Management.

A significant portion of the success of the Salinity Control Program has been due to the Paradox Valley Unit in the Upper Colorado River Basin. This project utilizes an injection well to prevent highly saline water from reaching a tributary of the Colorado River. The injection well is nearing the end of its service life, and an economically feasible replacement must be in place to avoid increased salinity when the injection well becomes inoperative. Selection and implementation of a replacement facility should be a high priority for the federal government.

Position Statement - *Settlement of Indian Reserved Rights* – (Resolution No. 2016-5)

Efforts to establish reserved Indian water rights will only be successful when the federal government is actively involved. Where the exercise of such water rights requires construction of infrastructure for water storage, transportation, and treatment, federal financial resources must be appropriated in a timely manner to implement these rights and the federal government must be creative in finding funding solutions. Where the water will come from to fill reserved rights continues to be the subject of much debate.

Indian water right claims based on reserved water rights for federal reservations are established under the Winters Doctrine. Water rights adjudication by appropriate administrative or judicial process is normally used to recognize and enforce water usage rights among competing interests. This adjudication process is often long and cumbersome and involves making decisions about how to distribute water amongst competitive and conflicting claims. Settlement of Indian water

rights claims through negotiations with all affected parties offers a more efficient, less costly means of resolving these disputes.

**Position Statement - *Uranium Mill Tailings Pile near Moab, Utah* -
(Resolution No. 2016-6)**

The Colorado River provides important water supplies for about 33 million people and irrigation for nearly 5.5 million acres of farmland in Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. The Colorado River also supplies water to about 3 million people and half a million acres of irrigated farmlands in Mexico. Therefore, protection of water quality from sources of contamination is critical. CRWUA is committed to source protection as a strategy preferable to treatment by downstream users.

A 16 million ton pile (covering 130 acres and up to 90 feet high) of uranium mill tailings was left by the Atlas Minerals Corporation near Moab, Utah. The mill tailings pile, located 750 feet from the Colorado River (150 miles upstream of Lake Powell). Groundwater at the Moab site has become contaminated, mainly with ammonia and uranium, from past processing activities. Contaminated groundwater is migrating to the Colorado River.

Public Law 106-398 enacted by Congress in October 2000 directed the Department of Energy (DOE) to prepare a plan and to commence remediation of the Moab site as soon as practicable after the completion of the plan. The DOE was directed to conduct remediation at the Moab site in a safe and environmentally sound manner, including groundwater restoration; and to remove, to a site in the State of Utah, for permanent disposition and any necessary stabilization, residual radioactive material and other contaminated material away from the floodplain of the Colorado River. As the final step in complying with the National Environmental Policy Act, DOE signed its Record of Decision on September 14, 2005.

In 2007, DOE awarded a remedial action contract for design and installation of a tailings-removal waste handling system, initial tailings movement and operations to relocate the mill tailings and associated wastes to Crescent Junction, a secure disposal cell 30 miles away from the Colorado River. The process of moving the tailings began on April 20, 2009. The next remedial action contract began in 2012 to continue tailings shipments. Since 2009, about 7.8 million tons have been relocated to the Crescent Junction disposal site.

CRWUA supports this DOE project relocating and properly disposing of the tailings pile. On account of the speed of removing the uranium waste being directly proportional to the Congressional appropriation amount, CRWUA supports additional Congressional appropriations to accelerate the clean-up to protect the millions of downstream users of the river.

Position Statement - *Colorado River Delta* - (Resolution No. 2016-7)

There has been much discussion in recent years about the enhancement and restoration of riparian habitat in the Colorado River Delta located in Mexico. The Colorado River Basin States and their water users have consistently worked with the United States, particularly through the IBWC and Mexico, to address issues of mutual concern. The Basin States have pledged continuing cooperation, as a matter of comity, and stated their desire to be active participants with the Federal Government in addressing bi-national Colorado River issues, including Colorado River Delta matters. Efforts to improve the environment in the Colorado River Delta will require study and clearly articulated and agreed upon habitat, species, and environmental goals. Working within the framework and allocations in the 1944 Mexican Water Treaty, the Basin States collaborated with the United States and Mexico to develop a pilot project that would provide a one-time pulse flow to the Colorado River Delta to assess environmental benefits. Water generated for this pulse flow was derived from water conserved by Mexico. This effort was memorialized in Minute No. 319 of the IBWC on November 20, 2012. The pulse flow was released from March through mid-May, 2014, and reached the Gulf of California on May 15. The Basin States remain committed to continuing to work on the development of future conservation projects with Mexico that provide bi-national benefits to both countries.

It is critical that there be strict adherence to the Law of the River upon which the Basin States and their water users rely for certainty and predictability within the continuing dialogue about Colorado River Delta matters. Under the Law of the River, the waters of the Colorado River have been fully appropriated and include water for all needs in Mexico. As a result, any alternatives to assist Mexico will require innovative solutions involving conservation, improved water management and non-water related actions.

CRWUA supports the implementation of innovative environmental projects like those that are set forth in Minute No. 319 of the IBWC. CRWUA supports establishment by the two countries of a common database on their laws and institutions, the operation and management of existing water delivery systems, hydrologic conditions, and the status of species and habitat in the Delta. This information will enhance technical analyses as well as further cooperative efforts among the two countries. International cooperation that has existed between the two countries regarding the Colorado River must continue and include participation by the Basin States.

Position Statement - *The Department of the Interior's WaterSMART Initiative* - (Resolution No. 2016-8)

On February 22, 2010, Secretary Ken Salazar signed a Secretarial order establishing a new water sustainability strategy for the United States, known as WaterSMART. The "SMART" in WaterSMART stands for "Sustain and Manage America's Resources for Tomorrow." Its purpose is to secure and stretch water supplies for use by existing and future generations to benefit people, the economy, and the environment; and to identify adaptive measures needed to address climate change and future water demands. This Initiative is aimed at improving water

management by encouraging voluntary water banks; assisting local communities by partnering with non-Federal stakeholders to develop incentives and best practices for implementing water conservation and wastewater recycling projects. As part of his order, Secretary Salazar announced that he is directing the Department of the Interior to increase available water supply for agricultural, municipal, industrial, and environmental uses in the western United States by 350,000 acre-feet by 2012. In its October 2012 progress report, the Department announced that it had achieved cumulative water savings in excess of 500,000 acre-feet, and had set a new goal of 730,000 acre-feet by the end of 2013. CRWUA supports continuation of these efforts.

The American West is the fastest growing region of the country and faces serious water challenges. The prolonged drought in the Western States, population growth in areas with existing water supply challenges, and increased need for water for energy production purposes, are exacerbating the demand for water and challenging traditional water management approaches. At the same time, historically “normal” rainfall and snowpack conditions in the West appear to be shifting due to climate change.

The Department of the Interior has an important role to play in providing leadership and assistance to States, Tribes, and local communities to address competing demands for water. The WaterSMART Initiative commits the Department to pursue a sustainable water supply for the Nation by establishing a framework to provide federal leadership and assistance on the efficient use of water, integrating water and energy policies to support the sustainable use of all natural resources, and coordinating the water conservation activities of the various Interior bureaus and offices. This Initiative envisions the Department’s efforts will contribute to the development of domestic expertise in water-related technologies and sustainable water management practices, thereby enhancing U.S. competitiveness in providing solutions to worldwide water issues in the 21st century.

Position Statement - Maintaining Financial Stability of the Upper Colorado River Basin Development Fund - (Resolution No. 2016-9)

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

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

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

Position Statement - *Management of Lower Colorado River Water Supplies* - (Resolution No. 2016-10)

Additional storage is needed for the beneficial use of Colorado River water. The continuing multi-year drought in the basin has resulted in tremendous storage reductions in Lake Powell and Lake Mead. Additional regulatory storage near the All-American Canal has been built. Removal of sediment from behind Laguna Dam also provides added storage capacity as well as environmental benefits. Both projects will reduce the drawdown of up to 200,000 acre-feet of water annually beyond the commitment to Mexico.

Improving Management of Flows from Parker Dam

Water released from Parker Dam flows to Imperial Dam. Because Imperial Dam diversions are so large it is more challenging to regulate flows below Parker Dam. Changes in weather conditions, water use orders, and inflows affect river management. Limited storage is available in Senator Wash Reservoir. This reservoir is designed for storage of over 12,000 acre-feet; however, operating restrictions limit storage to approximately 7,000 acre-feet.

The Warren H. Brock Reservoir has been constructed east of the Imperial Valley near Drop 2 of the All-American Canal with 8,000 acre-feet of storage. Benefits from the Warren H. Brock Reservoir include conserving reservoir system storage, improving river regulation and water delivery scheduling and providing opportunities for water conservation, storage and conjunctive use programs.

In addition to the Warren H. Brock Reservoir, there is a need to restore other regulatory storage. Removal of sediment behind Laguna Dam permits additional storage and enhanced management of the river. Habitat restoration and enhancement within this project area is being implemented under the Lower Colorado River Multi-Species Conservation Program (LCR MSCP). The LCR MSCP has developed a plan for habitat restoration in the area behind the dam. The habitat restoration elements of the plan would create wetlands and riparian habitat in or parallel to the excavated channel.

Yuma Desalting Plant

An average of 100,000 acre-feet of drainage flows bypass the Yuma Desalting Plant (YDP) to Mexico every year due to its high salt concentration. This water is put into the Main Outlet Drain Extension and sent to the Cienega de Santa Clara – and is thus not delivered to Mexico as part of the United States’ annual treaty water delivery obligation. The United States is required to replace these bypassed flows. The YDP is the only feasible method for treating water for discharge into the River and delivery to Mexico. Each year that passes without the operation of the YDP results in approximately 100,000 acre-feet of reservoir system drawdown that would not occur if the YDP was operating.

Position Statement - *Augmentation of Colorado River Water Supplies* - (Resolution No. 2016-11)

The CRWUA fully supports the Basin States’ proposal to accomplish a significant amount of water supply increase (e.g., augmentation) in the Colorado River Basin. The Seven Colorado River Basin States’ April 23, 2007 “Agreement Concerning Colorado River Management and Operations” contains a mutual commitment by the Parties to:

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

On September 18, 2009, the Commissioner of Reclamation announced a new Basin Study Program to better define options for future water management of Western river basins where climate change, record drought, population increases and environmental needs have heightened competition for scarce water supplies. The Colorado River Basin Water Supply and Demand Study was one of three initial studies announced and initiated in January 2010. Reclamation provided a 50% cost share contribution which was matched by the seven Colorado River Basin States and/or major water districts within the States, resulting in more than \$5.1 million of resources being committed for this effort. The Department of Interior recognized all members of the Basin Study Team by presenting this innovative and state-of-the-art study with the DOI’s 2012 "Partners in Conservation" award for being "a model of collaboration for future watershed planning across the country.”

The Colorado River Basin Water Supply and Demand Study was released on December 12, 2012. Four water supply scenarios and six water demand scenarios, coupled with continuation

after the year 2026 of reservoir operations under the *2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lakes Powell and Mead* versus reversion back to pre-2007 operations, resulted in 48 different combinations of supply/demand/future operation scenarios being fully evaluated within this Study.

The Study affirms the deficit between future water supply and demand. Imbalances already exist in some geographic areas in the Lower Basin and are projected to increase in both magnitude and spatial extent, as confirmed by the Study's "baseline" system reliability analysis; conducted by simulating the next 50 years for all scenarios without options and strategies. The Study projects average River flow decreases of approximately 9 percent on average over the next 50 years, strongly suggesting the River system is vulnerable to drier-climate-caused water supplies. Basin Study modeling presents a broad range of imbalances averaging, across the 48 water supply/demand/future scenarios, about 3.5 million acre-feet (MAF) per year by the year 2060. Without diligent planning and implementation of water supply and demand reduction programs the Basin will face chronic shortages.

The fourth phase of the Study, development and evaluation of opportunities for balancing supply and demand was initiated with a public solicitation of options and strategies to increase water supplies and reduce demands; a total of 160 suggestions were submitted to the Study Team. Each of these suggestions were characterized and evaluated. Four portfolios of strategies and options were evaluated in the study: highly selective (options common to the long-term reliability and low impact portfolios), low impact (options with relatively low energy intensity and exclusive of options having low feasibility or high permitting risk), long-term reliability, and highly inclusive (all options from both the long-term reliability and low impact portfolio, prioritized by cost effectiveness). Repeating the system reliability analysis with dynamically-implemented portfolios of cost-effective options and strategies quantified the potential to reduce the water supply/demand deficit within each of the four water supply and six future water demand scenarios evaluated in the Study. Vulnerability evaluation resulting in "signposts" defining when the next water supply increasing option would be switched on in the simulations, when conditions warrant, provided an adaptive approach.

The Study confirms that without action, the Colorado River system will become increasingly challenged to sustain the communities and resources that rely on the Colorado River water supply. Moreover, because the Study model and Study results were limited in their ability to account for the effects of Tribal reserved water rights and future Tribal water rights settlements in the Colorado River Basin, the Study did not fully capture all potential water imbalances or options available to meet demands in the Basin. The Study demonstrates that many of the Basin imbalances and resulting vulnerabilities to Basin resources can be greatly improved or mitigated through option and portfolio implementation. However, due to the particularly severe nature of some projected scenarios, the elimination of all vulnerabilities was not possible given the current range of options and the extreme nature of certain hydrologic futures. This raises significant questions and points out the need to collaboratively address such important matters as acceptable levels of risks to Basin resources and appropriate trade-offs in terms of options, costs, resources and other implications to achieve those acceptable levels.

The Basin Study is viewed by all participants as a "call to action." While the study was not established to nor does it make policy decisions, the seven Basin States and Reclamation are committing to continuing joint efforts to implement next steps as a part of the roll-out of this Study. Local, state, Tribal, regional, and basinwide projects will all be needed. The Basin States

have a history of crafting solutions fitting within the bounds of the “Law of the River.” Ongoing voluntary efforts implemented by Basin stakeholders, sometimes reaching across state lines, have focused on improving efficiency of operations, increasing conservation and municipal water use efficiency, implementing voluntary water transfers, increasing storage and conjunctively using surface water and groundwater. These efforts thus far include the Pilot System Conservation Program, executed between Reclamation, the Southern Nevada Water Authority (SNWA), Metropolitan Water District of Southern California (MWD), Central Arizona Water Conservation District (CAWCD) and Denver Water; and the Memorandum of Understanding executed between Reclamation, SNWA, MWD, CAWCD, Arizona Department of Water Resources, Colorado River Commission of Nevada, Colorado River Board of California for Pilot Drought Response Actions. More of these sorts of voluntary drought response efforts will be needed – along with commitment on the part of the Basin States, Tribes, and Federal Government to work together, accept tradeoffs and exploit synergies – so as to be able to reliably meet burgeoning water supply demands over the Study’s 50-year planning horizon.

Position Statement - *Potential Climate Change* - (Resolution No. 2016-12)

The potential for climate change-induced impacts to the Colorado River is a matter of considerable public discussion. While the possible causes and impacts are the subject of heated debate, many scientists assert that climate change will continue to affect global temperatures, sea levels and precipitation patterns, and will have a corresponding impact to Colorado River runoff. It is appropriate to take into account the possibility that climate change could affect patterns of precipitation, snowpack, runoff and related water resource factors in the Colorado River Basin. CRWUA urges the Bureau of Reclamation, each of the Basin States’ water management and water development agencies, and each water purveyor within the Basin to implement projects, including increased system capacity to reliably provide water supplies to areas of critical demand, in accordance with applicable law.

Position Statement - *Hoover Power Allocation Act* – (Resolution No. 2016-13)

The Boulder Canyon Project Act of 1928 authorized the Secretary of the Interior to construct hydroelectric generating facilities as part of the project. The 1928 Act further authorized 50-year contracts for the delivery of the power. The power contracts went into effect in 1937 with the commencement of power generation.

When disputes arose over the high rates originally charged for the power, the Basin States negotiated a resolution of the disputes that resulted in the 1940 Boulder Canyon Project Adjustment Act. The 1940 Act provided for the power to be sold at rates sufficient to re-pay the federal government for the cost of constructing and operating the project, with interest, over the

50-year term of the power contracts. When the expiration of the initial contracts was imminent, new disputes arose over renewal of those contracts and the allocation of the power.

The disputes were again resolved through negotiations, with the resolution incorporated into the Hoover Power Plant Act of 1984. The 1984 Act authorized the improvement of the generating facilities to increase the capacity of the power plant and the execution of new contracts.

Once again the power contractors have negotiated an agreement that resolved potential disputes and their resolution was adopted by Congress in the Hoover Power Allocation Act of 2011 (P.L. 111-72). The Act creates a pool of energy and capacity to be marketed to new customers, and expands the eligible customers to include Indian Tribes. New power contractors are required to sign the existing Implementation Agreement to which existing contractors are parties, and to share in the cost of the Lower Colorado River Multi-Species Conservation Program that provides Endangered Species Act compliance for power generation and marketing from the Hoover Powerplant.

The Western Area Power Administration and its Hoover power customers should work together to draft the agreements mandated by Congress in a manner that ensures the continued efficient operation of the Hoover Powerplant at reasonable cost.

Position Statement - *Western Area Power Administration* - (Resolution No. 2016-14)

The public benefits of hydropower generation in connection with reclamation projects were recognized by Congress in the Reclamation Project Act of 1939, which authorized the Secretary to sell the electric power to municipalities and other public corporations at cost. In 1977, Congress directed that the power marketing functions, including transmission, be separated from hydropower generation and transferred to new administrations created within the Department of Energy.

Today the Western Area Power Administration is responsible for marketing the power generated at 56 federal hydropower plants, including transmission of the energy through 17,000 miles of transmission lines. These hydropower plants include the Hoover Dam and Parker-Davis facilities on the lower Colorado River and Glen Canyon Dam on the upper Colorado River.

On March 16, 2012, Secretary of Energy Chu issued a memorandum instructing the power administrators to expand their activities in areas of transmission integration and upgrades, and to modify rate structures to incentivize the integration of renewable, variable energy generation and electric-vehicle deployment. This memorandum has raised significant concerns among the many public power agencies that have contracts for federal hydropower.

Traditionally, the cost of constructing, operating, and maintaining federal hydropower plants and transmission facilities have been paid through the cost-based rates paid by the customers receiving the power. The changes proposed by Secretary Chu would impose new costs on power customers for integrating power resources that do not benefit those customers. The CRWUA joins other organizations, including the American Public Power Association and the National

Water Resources Association, in expressing its concerns that Secretary Chu's directives not be implemented in a manner that shifts additional costs to existing customers.

Position Statement - *Minute No. 319 of the International Boundary and Water Commission* – (Resolution No. 2016-15)

Minute No. 319 of the IBWC to help implement the Treaty between the United States and Mexico Respecting the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Feb. 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994 ("Mexican Water Treaty") was signed by representatives of the United States and Mexico on November 19, 2012, in Coronado, California. Minute No. 319 is an interim (five-year term) agreement to proactively manage the Colorado River system to obtain binational benefits and mitigate risks associated with variable water supplies and growing demands. This Minute states, in part,

“... it is in the interests of the United States and Mexico to partner in exploring various cooperative measures ... including allowing for the creation of Intentionally Created Mexican Allocation (ICMA) when Mexico chooses to adjust its delivery schedule, sharing in the benefits of water that may be available temporarily through high elevation reservoir conditions, engaging in cooperative measures to reduce the likelihood of unprecedented drought-related reductions in water deliveries to water users in both countries and addressing the continuing impacts of the 2010 earthquake in the Mexicali Valley.”

Minute No. 319 will provide benefits to both the U.S. and Mexico that will include sharing Colorado River water shortages and surpluses under specifically defined Lake Mead water surface elevations. Mexico agrees to voluntarily share in shortages when the Secretary determines a shortage condition exists in the Lower Colorado River Basin (Lower Basin). Mexico will also get to share in the temporary benefit of surpluses available within the U.S. when the Secretary determines a surplus condition in the Lower Basin.

Mexico will be able to create ICMA by deciding to defer delivery of water volumes through adjustments to its annual delivery schedule resulting from water conservation projects or new water sources projects. As part of a joint-cooperative pilot program during the five-year interim period, Mexico agrees to allow some ICMA to be converted to Intentionally Created Surplus (ICS) for use within the U.S. as part of a pilot program intended to evaluate the aspects involved in creating water for the environment and an ICMA to ICS exchange project. This pilot program will enable the U.S. to fund water conservation projects in Mexico that will result in additional water being made available for use in the U.S., repair and improve water infrastructure and riparian area environmental enhancement in Mexico, and allow Mexico to provide water for environmental flows in the Colorado River limitrophe and its delta.

This Minute extends through December 31, 2017 the cooperative measures first established in Minute 318, “Adjustment of Delivery Schedules for Water Allotted to Mexico for the Years 2010 through 2013 as a Result of Infrastructure Damage in Irrigation District 014, Rio Colorado, Caused by the April 2010 Earthquake in the Mexicali Valley, Baja California,” dated December

17, 2010. This extension is based upon the need to continue the work required to complete the earthquake-caused canal and related infrastructure repairs. It provides that, among other provisions, that all water previously deferred under Minute 318 can be treated as ICMA.

Reclamation's Budget Justifications, Fiscal Year 2015 allocates the expenditure of \$2.976 million in support of implementation of Minute No. 319 from the Lower Colorado River Operations Program. Accordingly, the CRWUA urges the Congress of the United States to appropriate those funds to the Department of the Interior needed to honor the terms and commitments made within Minute No. 319. Should pilot projects be agreed upon that would require funding ahead of the schedule set within the Contributed Funds Agreement associated with Minute No. 319, the CRWUA urges the Congress of the United States to appropriate those funds in line with the pilot project construction schedules.

Position Statement --- *Clean Water Act* --- (Resolution 2016-16)

The issue described in item 13 of the "NPDES Permits" section of Resolution 2016-16 has been the subject of a decade of litigation. The EPA had historically taken the position that pesticides and herbicides that are applied in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) were not pollutants subject to NPDES permit requirements of the CWA. In a decision issued in litigation consolidating challenges across the country, the federal Sixth Circuit Court of Appeals ruled otherwise in *National Cotton Council v. EPA* (6th Cir. 2009) 553 F.3d 927. In response to this ruling, EPA finalized a general permit in June 2013 for the application of pesticides to waters of the United States. The CRWUA supports EPA's use of a general permit approach to NPDES compliance for pesticide applications to eliminate the time and cost required to obtain individual permits while allowing for the collection of data regarding how pesticide use may be affecting the nation's water quality.

The issue described in item 15 of the "NPDES Permits" section of Resolution 2016-16 is also the subject of years of litigation. In response to lawsuits alleging that water transfers are subject to NPDES permitting requirements, the EPA adopted a rule in 2008 expressly exempting water transfers. 40 CFR § 122.3(i). This interpretation of the CWA was upheld as reasonable in *Friends of the Everglades v. South Florida Water Mgmt. Dist.* (11th Cir. 2009) 570 F.3d 1210, *cert. denied* (U.S. 2010) 131 S.Ct. 643, 645. Legal challenges to application of the rule to specific water systems remain pending in the Second Circuit and the Ninth Circuit courts of appeals. The negative economic and social impacts of imposing an NPDES permit on water transfers could be extremely disruptive to the tens of millions of western residents who depend upon the extensive water infrastructure conveying water resources across the vast distances of the West. EPA should leave the rule in place, and it should be affirmed by Congress.

Congress should preserve the existing limited exemptions from NPDES permitting provided by Section 402(l) of the Clean Water Act by reaffirming that discharges composed of irrigation return flows and discharges of storm waters not subject to permitting under Section 402(p) of the Act are exempt.

In any clarifying amendments to the Federal Water Pollution Control Act of 1972, federal

jurisdiction over surface waters of the U.S. should not be expanded. Unfortunately, the EPA's draft report on *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, (September, 2013 External Review Draft, EPA/600/R-11/098B), notice of which was published in the Federal Register at 78 Fed. Reg. 58536 (Sept. 24, 2013) (hereafter "Draft Report") attempts to set aside this approach. The Draft Report served as the basis for a rule developed jointly by the EPA and the Army Corps of Engineers to "clarify" Clean Water Act jurisdiction, including a description of the factors that influence connectivity and the mechanisms by which connected waters affect downstream waters, over all of the Nation's waters and wetlands. The final rule has been stayed pending resolution of various federal court proceedings. The Colorado River Water Users Association points out the inappropriateness of, and expresses its strong opposition to, this effort by the EPA to broaden federal jurisdiction of the Clean Water Act by expanding the scope of waters of the U.S., including waters effectively regulated under state jurisdictions.

Congress should ensure that irrigated agricultural conveyance systems are not considered to be "waters of the U.S." and that traditional irrigation canal and drainage system management practices can continue free of federal oversight.

Position Statement of the Ten Tribes Partnership In Opposition to Resolution 2016-16 (Clean Water Act)

The Ten Tribes Partnership appreciates the opportunity to provide these comments with respect to Resolution 2016-16 concerning the Clean Water Act. The users of Colorado River water are directly affected by the implementation of the Clean Water Act; therefore, it is appropriate for the Colorado River Water Users Association (CRWUA) to express its position concerning that Act. However, the ten Indian nations that comprise the Ten Tribes Partnership are fundamentally different than the water users that comprise the non-tribal membership of CRWUA. The tribes are not only users of Colorado River water, they are sovereign entities with regulatory authority and responsibilities, and in some cases have been determined to be eligible by the U.S. Environmental Protection Agency to be treated as a state in order to implement provisions of the Clean Water Act. Therefore, the tribes have a significant interest in protecting their regulatory authority pursuant to the Clean Water Act.

The tribes take issue with Resolution 2016-16 for the following reasons:

Paragraph 8 purports to oppose USEPA's rule defining "waters of the United States" as set forth at 79 Fed. Reg. 22188 (April 21, 2014), which could potentially diminish the scope of the tribes' regulatory authority.

City of Albuquerque v. Browner, 97 F.3d 415 (10th Cir. 1996), cert denied, 522 U.S. 965 (1997) upheld the right of tribes to establish water quality standards more stringent than

federal standards and USEPA's authority to require upstream National Pollution Discharge Elimination System dischargers to comply with the downstream tribal standards. The Browner decision also confirmed USEPA's approval of tribal standards to protect cultural, historical, ecological, habitat, and aesthetic values, including ceremonial use. Instream flow protection is critical for tribes; therefore, the Ten Tribes Partnership cannot support Paragraphs 2 and 11.

For these reasons, the Ten Tribes Partnership is unable to support Resolution 2016-16.