

**Written Testimony of the
WESTERN STATES WATER COUNCIL**

**Submitted to the
House Committee on Natural Resources
Subcommittee on Water, Oceans, and Wildlife**

Regarding H. Res. 320, H.R. 4832, H.R. 5001, and H.R. 5345

November 4, 2021

On behalf of the Western States Water Council (WSWC), we wish to express our support for various provisions of H. Res. 320, H.R. 4832, H.R. 5001, and H.R. 5345. The WSWC is a bipartisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

H. Res. 320 - Universal Access to Clean Drinking Water

The WSWC has long supported the negotiated settlements of Indian water rights claims.¹ Water in the West is a limited resource, and the unquantified water rights claims of federally-recognized tribes negatively impact tribes, states, and communities across the West. Negotiated settlements of Indian water rights are a means of ensuring the reliability of water supplies for both tribal and non-tribal communities, through well-defined water rights, and provide the certainty needed to help conserve water, address environmental needs, promote economic development, and create jobs on and off tribal lands.

Many of these water rights settlements include infrastructure commitments that are vital to bringing clean drinking water to tribal communities and ensuring tribes have access to water needed for agriculture and economic development. In addition to the projects included in these settlements, tribes across the U.S. face many challenges in addressing basic water needs. There are, for example, tribal communities across the West that do not have ready access to safe drinking and wastewater systems. Infrastructure built as part of these settlements is therefore vital for many tribal communities.

Settlements also fulfill long-neglected federal trust and treaty obligations to tribes, which until settled, expose taxpayers nation-wide to expensive litigation and possibly court decrees that may recognize tribal water rights, but may or may not provide tribes with the resources to develop that water. The cost of meeting those trust and treaty obligations increases as time passes.

However, water rights settlements may not be immediately resolved, due in part to the complex and significant issues typically involved in the adjudication or negotiated settlement of Indian water rights claims. The WSWC upholds the sovereignty of the States to administer and

¹ For more information, see <https://westernstateswater.org/events/2021-symposium-on-the-settlement-of-indian-reserved-water-rights-claims/>

distribute the waters of each state, and Indian water rights claims are addressed through general state water rights adjudications, but the WSWC recognizes that final adjudication or settlement of those claims is not, and should not be, a prerequisite to providing reliable, safe drinking water infrastructure to federally recognized Indian Tribes and Alaska Native communities under federal trust and treaty obligations.

The WSWC supports universal access to reliable, clean drinking water for federally recognized Indian Tribes and Alaska Native communities (see Position #465 attached).² Much of the language in our policy position is similar to the language of H. Res. 320, though with more of a western state perspective on water-related concerns.

The WSWC supports the provision of clean water to tribes to meet their domestic needs and recognizes that providing basic drinking water service is an essential component of the federal trust responsibility. Additionally, developing the technical, managerial, and financial capacity of tribes to operate and maintain that infrastructure is critical to the longevity of such an investment. Federal programs already exist to fulfill many of these needs, but are underfunded and cumbersome to navigate.³

The WSWC supports a coordinated approach across federal agencies and departments to leverage those programs in a meaningful way, and adequate funding from Congress to meet those needs. The WSWC further supports federal agency collaboration with tribes, states, and local jurisdictions to establish expedited planning, design, development, and operation of water infrastructure to meet the clean drinking water needs of tribes. Finally, the WSWC urges Congress to support, encourage, and fund the appropriate, expedited resolution of negotiated settlements and adjudications relating to Indian water rights claims.

H.R. 4832 - Open Access Evapotranspiration (Open ET) Data Act

The WSWC strongly supports efforts to enhance and expand the availability of an open access to consistent and comprehensive water supply, demand and water use data and information, such as through an Open Access Evapotranspiration (OpenET) data program and supports related federal authorizing legislation and appropriations (see Position #473 attached). H.R. 4832 would authorize the creation of a software system and data platform by means of an operational use partnership that is crucial to improving access to data and information for more effective water management and use.

The WSWC particularly appreciates the fact that H.R. 4832 explicitly directs the Secretary of the Interior to “...coordinate data analyses, use, and collection efforts with other Federal agencies, States, and Tribal governments through existing coordinating organizations, such as — (A) the Western States Water Council; and (B) the Western States Federal Agency Support Team [WestFAST].” WestFAST was created a decade ago at the request of western governors to focus collaboration between federal and state agencies with water resources responsibilities. OpenET will involve partners from federal and state agencies, institution of higher education, private sector

² See https://westernstateswater.org/wp-content/uploads/2021/04/465_Universal-Access-to-Clean-Drinking-Water_2021Mar25.pdf

³ See, e.g., Universal Access to Clean Water for Tribes in the Colorado River Basin, available at <http://www.naturalresourcespolicy.org/docs/water-tribes/wti-full-report-4.21.pdf>

entities, and nongovernmental organizations using satellite and weather data to map consumptive water use/evapotranspiration (ET) at the individual field scale.

In the West, the predominant consumptive use of water is ET from irrigation. With this program, the Department of the Interior will be able to partner with the OpenET consortium and with a broad network of collaborators to refine, develop applications, and operationalize the use of OpenET, providing credible, transparent, automated, and easily accessible consumptive water use data across the West. No such system exists today. There is a need for developing new monitoring technologies such as OpenET that provide more timely data availability and more refined spatial coverage. Currently, access to satellite and ET data is limited and expensive, keeping it out of the hands of many water users and decision-makers. OpenET will allow water managers to assess how much water is being used via a cost-effective and easy-to-use web-based platform, filling a critical water data management gap.

The WSWC has long supported the use of remote sensing technologies and data from Landsat missions to improve the measurement and monitoring of consumptive water use through a partnership between the National Aeronautics and Space Administration (NASA) and U.S. Geological Survey (USGS). The recent launch of Landsat 9 and ongoing efforts to define the next Landsat mission help ensure that the data necessary for an operational OpenET program are available. Similarly, the WSWC has supported the U.S. Bureau of Agrimet network of weather stations that provide data that serves as an important and efficient ground-truthing, calibration, and model validation tool for analysis of information products derived from satellite platforms such as OpenET. Agrimet provides basic data on precipitation, temperature, solar radiance, wind speed and humidity required to calculate reference ET and inform remote-sensing platforms. The Agrimet weather observing network suffers from the challenges of aging instrumentation infrastructure, deferred maintenance, need for technology upgrades, and funding that fails to keep up with these needs, making it difficult to maintain data continuity and coverage for users.

The WSWC urges the Subcommittee to favorably report H.R. 4832. The WSWC has and plans to continue to urge the Appropriations Committee to prioritize OpenET and Agrimet requests so as to allow these valuable tools to benefit federal, state and local policymakers, water managers and water users as the West continues to face water supply, use and management challenges exacerbated by drought.

H.R. 5001 - Upper Colorado and San Juan River Basins Recovery Act

The Endangered Species Act (16 U.S. Code § 1531) includes Congressional findings and declarations of purposes and policy. The purposes are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved. Therefore, Congress declared that "...all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter." In 1982, the WSWC had a hand in the addition of Section 2(c)(2), which reads: "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." This addition recognizes the complex past and present relationship in the West between the management and development of water resources and the conservation and protection of threatened and endangered species.

The Upper Colorado River Endangered Fish Recovery Program is an excellent example of the implementation of this policy declaration through the creation of a broad and diverse partnership that is working to successfully recover four species of endangered fish in the Colorado River and its tributaries in Colorado, Utah, and Wyoming, while water use and development continues to meet human needs in compliance with interstate compacts and applicable federal and state laws. In addition to the States of Colorado, Utah and Wyoming, this partnership includes the Colorado River Energy Distributors Association, Colorado Water Congress, National Park Service, The Nature Conservancy, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, Utah Water Users Association, Western Area Power Administration, Western Resource Advocates, and Wyoming Water Association.

On October 15, following a review of the best available science and requesting public comment, the U.S. Fish and Wildlife Service announcing that it has reclassified one of four target species, the humpback chub, from endangered to threatened status. In announcing the change, Matt Hogan, Acting Regional Director for the U.S. Fish and Wildlife Service, declared: "Today's action is the result of the collaborative conservation that is needed to ensure the recovery of listed species. Reclassifying this distinctive fish from endangered to threatened is the result of many years of cooperative work by conservation partners in the Upper Colorado River Endangered Fish Recovery Program and the Glen Canyon Dam Adaptive Management Program. We thank everyone involved for their efforts as we look toward addressing the remaining challenges in the Colorado River Basin."

The Upper Basin Recovery Program's conservation and management actions have resulted in improved habitat and river flow conditions for the humpback chub over the past 15 years.

H.R. 5001 will allow this important program work to continue uninterrupted.

As noted in our attached position statement (see Position #470 attached), the WSWC has called upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress' intent to resolve water and species protection issues.

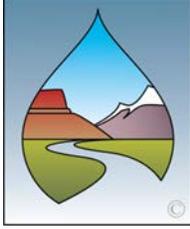
H.R. 5345 - Saline Lake Ecosystems in the Great Basin States Program Act

The WSWC has not specifically addressed H.R. 5345. However, its provisions establishing a cooperative regional program to assess, monitor, and benefit the hydrology of saline lakes in the Great Basin and the migratory birds and other wildlife dependent on those habitats, consistent with valid and existing state water rights, and instate compacts and apportionments, are in harmony with other WSWC positions (see Position #449 attached).

Moreover, at present, the WSWC is working with the USGS to make available data and information on state water rights and uses through the WSWC's Water Data Exchange (WaDE). Eventually, the WSWC also intends to include state water quality and federal reserved water rights data and information. These ongoing efforts could help facilitate USGS achieving some of the objectives of H.R. 5345.

WaDE and USGS are essential hubs that are part of a growing Internet of Water (IOW) that through close collaboration and engagement is designed to help partners modernize their water data infrastructure and facilitate effective water management decisions (see internetofwater.org).

We appreciate the Subcommittee's leadership and the opportunity to provide written testimony and information on behalf of our member states.



Position No. 449
Revised and Readopted
(see former Positions #406 – June 29, 2017;
#365 – July 18, 2014;
and #331 – July 29, 2011)

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
REGARDING PREEMPTION OF STATE LAW IN FEDERAL LEGISLATION
No Host Virtual Meetings
July 22, 2020

WHEREAS, the future growth, prosperity and economic and environmental health of the West and the Nation depend upon the availability of adequate quantities of water for myriad uses; and

WHEREAS, Western states have primary authority and responsibility for the appropriation, allocation, development, conservation and protection of water resources, both groundwater and surface water, including protection of water quality, instream flows and aquatic species; and

WHEREAS, the Congress has historically deferred to state water law as embodied in Section 8 of the Reclamation Act, Section 10 of the Federal Power Act, Section 101(g) and 101(b) of the Clean Water Act, and myriad other statutes; and

WHEREAS, any weakening of the deference to state water would be inconsistent with over a century of cooperative federalism and a threat to water rights and water rights administration in all western states; and

WHEREAS, federal deference to state water law is based on sound principles for the protection of private property rights and the collective public interest in managing our water resources and the environment; and

WHEREAS, states are primarily responsible and accountable for their own water development, management and protection challenges, and are in the best position to identify, evaluate and prioritize their needs and plan and implement strategies to meet those needs; and

WHEREAS, any legislation related to any federal water policy, water plan or planning process must recognize, defer to and support State, tribal and local government water laws, agreements, and management processes; and

Position No. 449
Revised and Readopted
(see former Positions #406 – June 29, 2017;
#365 – July 18, 2014;
and #331 – July 29, 2011)

WHEREAS, the federal government should explicitly recognize and provide support for ongoing watershed and state water management efforts both in and between the states, tribes and local entities, closely consult with the states and provide appropriate technical and financial assistance; and

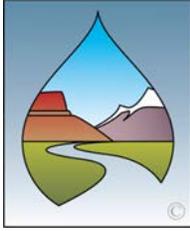
WHEREAS, the federal government should avoid strategies that increase unilateral mandates on state, tribal and local governments; and

WHEREAS, from time to time federal legislation and regulatory actions have been proposed that are not consistent with sound principles of cooperative federalism and primary state water related laws, authorities and responsibilities; and

WHEREAS, legislation preempting or discharging requirements for compliance with state law is not consistent with a balanced federalism approach;

NOW, THEREFORE, BE IT RESOLVED, that nothing in any act of Congress should be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to: (a) water or watershed management; (b) the control, appropriation, use, or distribution of water used in irrigation, municipal, environmental, or any other purposes, or any vested right acquired therein; or (c) intending to affect or in any way to interfere with any interstate compact, decree or negotiated water rights agreement.

BE IT FURTHER RESOLVED, that the Administration and Congress should strive to ensure federal laws, policies, rules and regulations are consistent with the principles set forth herein.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
UNIVERSAL ACCESS TO RELIABLE, CLEAN DRINKING WATER FOR
FEDERALLY RECOGNIZED INDIAN TRIBES AND ALASKA NATIVE
COMMUNITIES

Texas Hosted Spring Virtual Meetings
March 25, 2021

WHEREAS, access to reliable, clean drinking water is an essential human need that is critical to the public health, well-being, educational attainment, and economic development of all communities in the United States; and

WHEREAS, lack of access to reliable, clean drinking water has long been a significant problem for many federally recognized Indian Tribes and Alaska Native communities such that nearly half of all households still do not have access to reliable, clean drinking water, and are significantly more likely than non-Native households to lack indoor plumbing; and

WHEREAS, reliable, clean drinking water may be unavailable to households in federally recognized Indian Tribes and Alaska Native communities for a number of reasons, including because –

- (1) there is no piped water system connecting to the house;
- (2) the water available to the household does not meet minimum standards protective of human health;
- (3) the water and sanitation infrastructure is deteriorating, insufficient or non-existent; or
- (4) federally recognized Indian Tribes and Alaska Native communities are unable to support the operation and maintenance needs of existing water and sanitation infrastructure; and

WHEREAS, federal programs administered through the Department of the Interior, Indian Health Service of the Department of Health and Human Services, the Environmental Protection Agency, the Department of Agriculture, and other federal and state agencies have not been fully successful in developing and/or maintaining the infrastructure necessary to provide reliable, clean drinking water in some federally recognized Indian Tribes and Alaska Native communities; and

WHEREAS, many federally recognized Indian Tribes and Alaska Native communities have unresolved Indian water rights claims, which may not be immediately resolved, due in part to the complex and significant issues typically involved in the adjudication or negotiated settlement of Indian water rights claims; and

WHEREAS, the Western States Water Council recognizes the sovereignty of the states to administer and distribute the waters of each state and that adjudication of Indian water rights claims occur through state water rights adjudications, and strongly supports the negotiated settlement of Indian water rights claims; and

WHEREAS the development of drinking water infrastructure for federally recognized Indian Tribes and Alaska Native communities is often included in the settlement of Indian water rights claims, but the Western States Water Council recognizes that because of the length of time it takes to successfully adjudicate or negotiate settlement of Indian water rights claims, an alternative means for immediate action is needed to provide funding to develop drinking water infrastructure for federally recognized Indian Tribes and Alaska Native communities; and

WHEREAS, the trust responsibility of the Federal Government to ensure the survival and welfare of federally recognized Indian tribes and Alaska Native communities includes the provision of safe and reliable drinking water infrastructure for basic water services; and

WHEREAS, the ongoing COVID-19 pandemic has had a disproportionate impact on federally recognized Indian Tribes and Alaska Native communities due to multiple factors including lack of access to running water, and has provided a stark reminder that access to reliable, clean drinking water to support basic personal hygiene practices is a matter of life or death for all citizens of the United States.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports the provision of reliable, clean drinking water to meet the domestic needs of federally recognized Indian Tribes and Alaska Native communities and recognizes that providing access to reliable, clean drinking water through water infrastructure, coupled with developing the technical, managerial, and financial capacity to operate and maintain that infrastructure, is an essential component of the Federal trust responsibility to Native Americans; and

BE IT FURTHER RESOLVED, that while recognizing that adjudication or negotiated settlement of Indian water right claims is critically important, and that the provision of reliable, clean drinking water and related infrastructure is frequently an important component of adjudications and settlements, the Western States Water Council believes that a final adjudication or settlement is not and should not be a prerequisite to providing reliable, safe drinking water infrastructure to federally recognized Indian Tribes and Alaska Native communities; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration and Congress to support, encourage, and fund the appropriate, expedited resolution of negotiated settlements and adjudications relating to Indian water rights claims; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration to employ a coordinated approach working across departmental and agency boundaries in collaboration with Tribal governments; and

BE IT FURTHER RESOLVED, that the Western States Water Council also urges Federal agencies and Tribal governments to coordinate and work collaboratively with appropriate State and local jurisdictions to establish expedited planning, design, development, and operation of infrastructure necessary to provide reliable, affordable, and clean drinking water for federally recognized Indian Tribes and Alaska Native communities in accordance with applicable law.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
ENDANGERED SPECIES AND STATE WATER RIGHTS
Cody, Wyoming
June 25, 2021

WHEREAS, Section 2(c)(2) of the Endangered Species Act declares it is 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 (16 U.S.C. 1531); and

WHEREAS, water in the West is often a scarce resource critical for both a healthy economy and healthy environment, including protected endangered and threatened species; and

WHEREAS, water is both a public and a private resource, with some uses reserved for the public good, while others are recognized as protected private property rights; and

WHEREAS, the States are primarily responsible for the allocation, administration, management, and protection of the water resources and rights to the use of water within their borders, as well as the management and protection of diverse fish and wildlife species and the aquatic and terrestrial environments upon which they depend; and

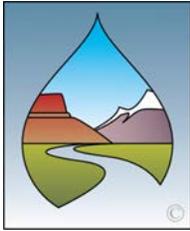
WHEREAS, many, if not most, of the senior state granted rights to the use of waters in western rivers and streams predate federal environmental protections by decades, and the certainty provided by early water rights continues to be the foundation for past, present and future investments; and

WHEREAS, the West and its flora and fauna, including protected species, are part of a unique and unparalleled heritage reflecting the Nation's value for wild and open spaces, as well as a western conservation ethic; and

WHEREAS, western States and many western water uses are also committed to the preservation of western species through reasonable, transparent and effective regulatory protections and restrictions, as well as conservation incentives for private property owners; and

WHEREAS, opportunities exist for greater collaboration and cooperation to conserve threatened and endangered species, while recognizing state granted water rights and addressing western water issues, without unmitigated or uncompensated "takings" of either water rights or threatened and endangered species where provided for under state or federal law.

NOW, THEREFORE, BE IT RESOLVED that the Council calls upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress' intent to resolve water and species protection issues.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
FEDERAL WATER AND CLIMATE DATA COLLECTION
AND ANALYSIS PROGRAMS
Deadwood, South Dakota
September 16, 2021**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection, and management issues, and the member states and political subdivisions have long been partners in cooperative federal water and climate data collection and analysis programs; and

WHEREAS, in the West, water is a critical, vital resource and sound decision-making demands accurate and timely data on precipitation, temperature, evapotranspiration, soil moisture, snow depth, snow water content, streamflow, groundwater, water quality and similar information; and

WHEREAS, the demands for water and related climate data continue to increase, and this information is used by federal, state, tribal, and local government agencies, as well as private entities and individuals to: (1) forecast flooding, drought and other climate-related events; (2) project future water supplies for agricultural, municipal, and industrial uses; (3) estimate streamflows for hydropower production, recreation, and environmental purposes, such as for fish and wildlife management, including endangered species needs; and (4) facilitate water management and administration of water rights, decrees, and interstate compacts; and

WHEREAS, without timely and accurate information, human life, health, welfare, property, and environmental and natural resources are at considerably greater risk of loss; and

WHEREAS, critical and vital information is gathered and disseminated through a number of important federal programs including, but not limited to: (1) the Snow Survey and Water Supply Forecasting Program, administered by the National Water and Climate Center (NWCC) in Portland, Oregon, and funded through USDA's Natural Resources Conservation Service (NRCS); (2) NWCC's Soil and Climate Analysis Network (SCAN); (3) the U.S. Geological Survey's (USGS) Groundwater and Streamflow Information Program (GWSIP) and National Streamflow Network, which are funded through the Department of Interior; (4) Landsat thermal data, archived and distributed by the USGS, and other remotely-sensed data acquired through the National Atmospheric and Space Administration (NASA) and its water-related missions; (5) the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service and Climate Programs Office; (6) the Environmental Protection Agency's National Environmental Information Exchange Network (NEIEN); and (7) the Bureau of Reclamation's Agrimet System and similar weather station networks; and

WHEREAS, state-of-the-art technology has been developed to provide real or near real-time data in formats that can be shared and used by different computer programs with the potential to vastly improve the water-related information available to decisionmakers in natural resources and emergency management, and thus better protect the public safety, welfare and the environment; and

WHEREAS, these federal programs and newly proposed projects and programs provide useful products to assist in visualizing and interpreting data on water and snow, water use, evapotranspiration and other parameters making water supply, demand and availability information more accessible and easy to interpret; and

WHEREAS, over a number of years, the lack of capital investments in water data programs has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water resources related data gathering activities; and

WHEREAS, there is a serious need for adequate and consistent federal funding to maintain, restore, modernize, and upgrade federal water, weather and climate observation programs, not only to avoid the loss or further erosion of critical information and data, but also to address new emerging needs, with a primary focus on coordinated data collection and dissemination; and

WHEREAS, wildfires, floods, and other natural disasters have led to the significant loss of monitoring capabilities and require timely action to restore, maintain, and upgrade sensors and observing systems and networks.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to give a high priority to the allocation and appropriation of sufficient funds for these critical, vital programs, which benefit so many, yet have been or are being allowed to erode to the point that it threatens the quantity and quality of basic data provided to a myriad, growing and diffuse number of decisionmakers and stakeholders, with significantly adverse consequences.

BE IT FURTHER RESOLVED, that the Western States Water Council supports efforts to enhance and expand the availability of and access to consistent and comprehensive water supply, demand and water use data and information, such as, but not limited to, the Open Access Evapotranspiration (OpenET) data program and related federal authorizing legislation and appropriations.