

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
urging the
CONGRESS AND ADMINISTRATION
TO CONTINUE TO RECOGNIZE STATE PRIMACY REGARDING
WATER RIGHTS AND WATER QUALITY CERTIFICATION
in the
FEDERAL LICENSING OF HYDROELECTRIC PROJECTS
Washington, D.C.
March 29, 2006
(revised and updated)

WHEREAS, water is the lifeblood of each of the arid Western States and its allocation affects the future of each Western State's economic and environmental well-being, as well as social and cultural strength; and

WHEREAS, each Western State has developed comprehensive systems for the appropriation, use and distribution of water for myriad uses and tailored to its unique physiographic, hydrologic and climatic conditions; and

WHEREAS, western states support the appropriate development of our regional hydropower resources as an important part of a balanced national energy policy; and

WHEREAS, hydropower development can have a profound impact on water flow regimes and other beneficial water uses; and

WHEREAS, Congress has consistently recognized the primacy of state law in the allocation and administration of water rights for all uses because of the need for a comprehensive system of governance; and

WHEREAS, Congress has also delegated its authority under the Federal Clean Water Act to the states for the protection and conservation of water quality, consistent with state water quality standards and state water rights law and administration; and

WHEREAS, Section 401 of the Federal Clean Water Act empowers states to certify that any federally authorized, permitted or licensed projects or other activities are consistent with applicable state water quality standards; and

WHEREAS, any federally licensed activity that may result in any discharge into navigable waters must be preceded by a Section 401 certification that ensures compliance with all provisions of state law; and

WHEREAS, states have primary jurisdiction over the integration of water quantity and water quality issues; and

WHEREAS, the Federal Energy Regulatory Commission (FERC) has made changes to streamline the licensing process that affect Section 401 certification requirements and other federal environmental reviews within its hydropower licensing authority under the Federal Power Act; and

WHEREAS, FERC recognizes the states' mandatory conditioning authority under Section 401; and

WHEREAS, the new FERC dispute resolution process should not affect the independent authority of state agencies with water quality certification authority to require applicants to provide needed information; and

WHEREAS, FERC should make the study dispute resolution process available to all state and tribal agencies that need studies to be conducted to meet their responsibilities for making recommendations under Sections 10(a) and 10(j) of the Federal Power Act; and

WHEREAS, FERC should provide for preparation of a single environmental document that can be used by all agencies that require preparation and circulation of environmental documentation before those agencies can issue a decision, including water quality certification; and

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports continuing efforts to integrate and streamline existing state and federal hydropower licensing requirements, while recognizing the states' mandatory conditioning authority under Clean Water Act Section 401 and Congress' longstanding deference to the states with regard to the allocation of water for all uses, including hydropower.

BE IT FURTHER RESOLVED that these rules provide for a dispute resolution process that is available to all state and tribal agencies that need studies to be conducted to meet their responsibilities for making recommendations under Sections 10(a) and 10(j) of the Federal Power Act, that is binding only for purposes of determining what studies FERC will require the applicant to conduct, but is not binding on states exercising their independent authority over water quality certification.

BE IT FURTHER RESOLVED that the Western States Water Council supports the change made by FERC in Section 5.23 of the new Integrated Licensing Process (ILP) regulations requiring that the license applicant file their request for Clean Water Act (CWA) 401 water quality certification from the State no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis.

BE IT FURTHER RESOLVED that the Western States Water Council opposes any administrative or legislative effort to weaken or eliminate states' mandatory conditioning authority under Section 401, and supports efforts to fully recognize the states' authority to allocate and regulate water uses for all purposes, including hydropower.