

POSITION
of the
WESTERN STATES WATER COUNCIL
on
STATE PRIMACY OVER GROUNDWATER
Washington, D.C.
March 15, 2012

WHEREAS, groundwater is a critically important natural resource that is vital to the economy and environment of the arid West;

WHEREAS, the Desert Land Act of 1877 and the United States Supreme Court in *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935) recognize States have exclusive authority over the allocation and administration of rights to the use of the groundwater within their borders and States and their political subdivisions are primarily responsible for the protection, control and management of the resource;

WHEREAS, the Congress has created and the U.S. Supreme Court has recognized federal reserved rights to surface water, but no federal statute has addressed nor federal court recognized any federal property or other rights related to groundwater; and

WHEREAS, the regulatory reach of federal statutes and regulations, including but not limited to the Clean Water Act, Endangered Species Act, National Environmental Policy Act, Reclamation Act of 1902, Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act, were never intended to infringe upon state ownership or control over groundwater; and

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

WHEREAS, the conditions affecting groundwater supplies, demands, and impairments vary considerably across the West and within individual states; and

WHEREAS, federal efforts to exert control over or ownership interests related to groundwater or otherwise infringe upon or supersede state groundwater management are contrary to federal law and threaten effective groundwater management and protection; and

WHEREAS, nothing stated in this position is intended to apply to the interpretation or application of any interstate compact.

NOW THEREFORE BE IT RESOLVED, states have exclusive authority over the allocation and administration of rights to the use of the groundwater located within their borders and are primarily responsible for allocating, protecting, managing and otherwise controlling the resource; and

BE IT FURTHER RESOLVED, that the Western States Water Council opposes any and all efforts that would establish a federal ownership interest in groundwater or diminish the primary and exclusive authority of States over groundwater.

(See also Position #337)