

# ***IDAHO WATER USERS ASSOCIATION***



## ***2018 RESOLUTIONS***

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## Statement of Purposes & Objectives

IWUA is devoted to the conservation, protection and reasonable utilization within the State of Idaho of the water resources, which arise in and flow through Idaho. IWUA supports the following principles and positions:

1. Compliance with State law by all users and claimants in the administration of water rights by supporting:
  - a. federal deference;
  - b. interstate compacts;
  - c. legislation or any other action to protect Idaho waters for use in Idaho;
  - d. language protecting state sovereignty in any wilderness, wild and scenic river, roadless area, national monument, or any other federal property designation proposed for Idaho;
  - e. legislative amendments to the Federal Power Act to ensure that FERC not license hydropower projects unless the applicant has obtained or is able to obtain states water rights; and
  - f. definition of aquifer recharge as a beneficial use.
2. A McCarran Act Adjudication of the Snake River Basin and other Idaho river basins including Winters Doctrine and Federal Reserved Rights to:
  - a. protect all valid existing uses as perfected property rights;
  - b. provide quantified data as to future water use and development of Idaho's unappropriated waters;
  - c. reasonably determine the quantity and use of reserved water rights; and
  - d. provide for federal payment through appropriation or otherwise of the cost of processing federal claims to water in the Snake River Basin Adjudication.
3. The orderly and optimum development of Idaho's remaining unappropriated water under reasonable cost-sharing principles and tax laws by private, state and federal entities, including but not limited to ground water recharge districts.
4. Reasonable operation of State and Federal safety of dams and security programs and orderly rehabilitation of projects.
5. Continued operation of the federal cost-shared Natural Resources Conservation Service snow survey.
6. Reasonable water quality, environmental and tax laws, policies, regulations, and programs including:
  - a. that the Congress of the United States recognize the primacy of state water allocation and water quality in efforts to reauthorize the federal Clean Water Act and the Endangered Species Act;
  - b. federal noxious weed and pest control on the public domain;
  - c. continued testing, monitoring and oversight of radioactive storage near or above water resources;
  - d. reasonable allowances be made for allowing burning for essential agricultural functions such as maintenance of water conveyance facilities and field burning for grass and cereal crops;
  - e. reasonable administration of the Safe Drinking Water Act, including research, technical assistance and education;
  - f. studies to demonstrate benefits of the agricultural water quality program with technical assistance for participants;
  - g. federal and state agencies retain lands needed for the proper operation of water projects;
  - h. tax relief for hydroelectric facilities owned, used or occupied by non-profit water user organizations consistent with tax relief for other sources of energy;
  - i. fair consideration of all competing interests and the appropriation doctrine in river basin planning; without such consideration, legislative rejection of the plan should occur;
  - j. title transfer to operating entities of distribution and drainage systems upon repayment, upon request of the operating entity and without further cost to said entity;
  - k. a sufficient supply and use of labeled chemicals for land and aquatic weed and pest control; and
  - l. deference to state laws and positions.

# 2017 Resolutions

## 2017-1: Essential Fish Habitat

WHEREAS, During 1996, Congress enacted amendments to the Magnuson Fishery Act directing the National Marine Fisheries Service (NMFS) to establish guidelines to assist regional fishery management councils in the identification of essential fish habitat. NMFS published a proposed rule which was subsequently adopted as a final rule; and

WHEREAS, The final rule provides that essential fish habitat may be identified within both Federal and State waters. The proposed rule also encourages efforts to minimize depletion or diversion of water and suggests increasing flow as a measure to improve essential fish habitat; and

WHEREAS, This represents an unauthorized intrusion on State allocation and management of water resources. Congress has exercised long-standing deference to States in the area of water allocation and management. Absent a clear directive from Congress to the contrary, essential fish habitat should not include state-managed waters or waters allocated or managed pursuant to interstate compacts or U.S. Supreme Court decrees; and

WHEREAS, Consultation between federal agencies and the councils are required under the final rule. This is duplicative of similar requirements under the Endangered Species Act. NMFS is also to provide recommendations to State agencies regarding state-authorized activities that may impact essential fish habitat; and

WHEREAS, The final rule seeks to expand NMFS' jurisdiction to areas far beyond fishing in the marine environment, delving into all Federal and State operations of State waters. Ironically, while other activities would be regulated on State waters, fishing would not. NMFS is not authorized to exercise such far-reaching jurisdiction over State-managed water and non-fishing activities.

NOW, THEREFORE, BE IT RESOLVED, That the National Marine Fisheries Service be urged to modify its existing rule on essential fish habitat, to eliminate any intrusion upon, or interference with non-fishing activities including allocation and management of water resources by the States or pursuant to interstate compacts or U.S. Supreme Court decrees.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges Congress to enact amendments to the Magnuson Fishery Act expressly limiting NMFS' jurisdiction under the Act.

## 2017-2: BOR Facilities Transfer

WHEREAS, The Bureau of Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-federal entities that are not identified as having national importance; and

WHEREAS, The Bureau of Reclamation has identified certain federal facilities that meet the Bureau of Reclamation's criteria for title transfer; and

WHEREAS, Certain irrigation districts have requested, through formal resolution, that the Bureau of Reclamation transfer full title of ownership of facilities to them; and

WHEREAS, The Bureau of Reclamation and these irrigation districts have initiated the transfer process; and

WHEREAS, federal legislation is being developed that would change and/or streamline the title transfer process; and

WHEREAS, retaining reserved power may be necessary to continue to operate and maintain certain districts, including after title transfer.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the efforts of these irrigation districts to acquire full title of the facilities where requested.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association support congressional authorization of such transfers, if required, without delay due to any necessary environmental compliance requirements (transfer of title will be complete once environmental requirements are met).

BE IT FURTHER RESOLVED, That the Idaho Water Users Association support legislation to streamline and make the transfer process more efficient and cost-effective, provided that such legislation allows water users the option to retain reserved power for continued operation and maintenance purposes

### **2017-3: Snake River Recharge**

WHEREAS, Water levels in the Eastern Snake Plain Aquifer, as well as surface water flows, have decreased over the past several years; and

WHEREAS, These decreased water levels may be improved by artificial recharge at various locations on the Snake River Plain as determined by the Eastern Snake Plain Aquifer model and recharge study.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports continued efforts to identify and implement the most effective aquifer recharge sites and projects, including those which would replenish surface and spring flows to help mitigate impacts on senior surface water rights.

### **2017-4: Fisheries Restoration & Irrigation Mitigation Act**

WHEREAS, The Fisheries Restoration and Irrigation Mitigation Act ("Act") was signed into law during November 2000 to establish a program to implement mitigation devices, such as fish screens, to lessen impacts on fisheries associated with irrigation water diversions by local governmental entities; and

WHEREAS, The Act authorizes federal funds to assist with voluntary fish mitigation projects in Idaho, Montana, Oregon, and Washington.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports voluntary participation in the program by non-federal entities and that facilities owned and/or operated by canal companies, irrigation districts, or similar organizations are not required to comply with the Act even if receiving federal project water.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports that the individual state be permitted to determine if it will voluntarily participate in the program.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the goal of the Act in not impairing continued withdrawal of water for irrigation and other purposes.

### **2017-5: Hells Canyon Dams – Reintroduction of Salmon**

WHEREAS, The Idaho Power Company is currently in the process of relicensing its hydroelectric projects at Hells Canyon; and

WHEREAS, The Hells Canyon Complex supplies approximately 70% of the hydroelectric power generated by the Idaho Power Company; and

WHEREAS, Irrigators and the general public rely upon a firm supply of power from the Idaho Power Company; and

WHEREAS, As part of the relicensing process before the Federal Energy Regulatory Commission (FERC), various Indian tribes and environmental groups have requested that the Idaho Power Company be required to study the possibility of "decommissioning", or removing, the Hells Canyon Complex of dams; and

WHEREAS, The Idaho Power Company may also be required to study other methods for the possible reintroduction of salmon and steelhead species to the area above Hells Canyon, as far upstream as Shoshone Falls, and including virtually all tributaries to the Snake River above Hells Canyon; and

WHEREAS, Many of the species which would be reintroduced above Hells Canyon are listed under the Endangered Species Act; and

WHEREAS, Reintroduction of these species could have drastic impacts on irrigated agriculture, water supplies and electric power production in the State of Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association is opposed to the study or implementation of the possible reintroduction of salmon and steelhead species above the Hells Canyon Complex of hydroelectric dams.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges FERC, the State of Idaho and the Idaho Power Company to oppose reintroduction of the species above the Hells Canyon Complex, or any study of dam removal at Hells Canyon.

### **2017-6: Office of Species Conservation – Endangered Species**

WHEREAS, The Office of Species Conservation (an office within the Office of the Governor) was created to provide coordination, cooperation and consultation among and between the various state and federal agencies with responsibility for species listed under the Endangered Species Act (ESA); and

WHEREAS, The Office of Species Conservation was created to solicit and review data and scientific information; develop an integrated state policy towards those listed species; negotiate and implement conservation plans and agreements, and marshal state resources to assist in the management and conservation of those species; and

WHEREAS, The State of Idaho must marshal the various resources of the state in a cooperative, consensus-based approach to address the population declines in some of Idaho's species; and

WHEREAS, The Office of Species Conservation should coordinate policy and action between state and local agencies and landowners to take measures to avoid future threatened or endangered listing of species within Idaho; and

WHEREAS, The Office of Species Conservation should assume the lead in efforts to petition the Secretary of Interior and Commerce to delist species that have reached acceptable recovery levels and where protection under the ESA is no longer warranted, or where it is shown that original listings were made in error.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the State of Idaho's Office of Species Conservation and its efforts to coordinate policy and programs related to proposed threatened and endangered species in Idaho, and declining species that face possible future ESA listings.

#### **2017-7: Klamath Basin – Biological Opinions & Action**

WHEREAS, Farmers in the Klamath Basin irrigate approximately 232,000 acres with water stored in Upper Klamath Lake and in Lake Ewauna and Tulelake; and

WHEREAS, In May 2002, the National Marine Fisheries Service (NMFS) and the United States Fish & Wildlife Service (USFWS) issued biological opinions concluding that the proposed 10-year Operation Plan for Upper Klamath Lake, Link River Dam, Tulelake and the related irrigation delivery facilities jeopardized the continued existence of the Southern Oregon/Northern California coho salmon, the Lost River sucker fish, and the shortnose sucker fish; and

WHEREAS, These opinions make the same conclusions as the biological opinions issued in April 2001; and

WHEREAS, In direct response to these biological opinions, the Bureau of Reclamation issued a revised 2001 Operation Plan where farmers in the Klamath Basin received no irrigation water from Upper Klamath Lake, the Klamath River, Lake Ewauna, Tulelake and the related irrigation facilities in 2001; and

WHEREAS, Klamath Basin farmers were prevented from exercising state acquired water rights and were forced to leave thousands of acres idle in 2001; and

WHEREAS, The Bureau of Reclamation has indicated that the scientific basis for the jeopardy decisions in the 2002 biological opinion is in question; and

WHEREAS, The Bureau of Reclamation has indicated that NMFS and USFWS have ignored the results of an interim report of the National Academy of Science's National Research Council finding that presumed biological benefits of higher lake and river levels demanded in the 2001 biological opinions were unproven.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association is opposed to any future actions taken by the Department of Interior that are similar to the strategies employed in the Klamath Basin in 2001 and that do not recognize and adhere to state water law.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association is opposed to any biological opinions issued for Bureau of Reclamation operations in the Klamath Basin that do not employ the best available science.

#### **2017-8: North Fremont Gravity Pressure Irrigation Project**

WHEREAS, North Fremont Canal System, Inc. is continuing to plan and construct the North Fremont Gravity Pressure Irrigation Project (Project) located near Ashton, Idaho which will incorporate irrigation water from three (3) canals into a gravity pressure pipeline; and

WHEREAS, The Project is projected to significantly reduce transmission loss, eliminate 15,000 installed electric horsepower, for an estimated savings of about 20,000 megawatt hours of power annually, and provide an opportunity to develop approximately 36,000 megawatt hours of hydro-electric energy production; and

WHEREAS, The Project will also provide irrigation efficiencies and improve streamflows and water quality in Fall River and the Henry's Fork of the Snake River.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the North Fremont Canal System, Inc. in its efforts to fund, plan and build the North Fremont Gravity Pressure Irrigation Project.

#### **2017-9: Nez Perce Water Rights Settlement**

WHEREAS, The Nez Perce Tribe, and the United States on behalf of the Tribe, has filed several thousand water right claims in the Snake River Basin Adjudication (SRBA), including instream flow claims to the Snake and Clearwater Rivers and springs and fountains claims on private and State lands; and

WHEREAS, The Tribe's water rights claims threaten virtually every water right claim in the Snake River Basin, including surface and groundwater rights for irrigation, domestic, commercial, municipal, industrial and other purposes, as well as water rights and private springs for over 1,200 private landowners; and

WHEREAS, A broad coalition of objectors to the Tribe's claims representing cities, industries, water user entities, and the State of Idaho, has resisted the Tribe's water right claims and participated in a court ordered mediation to resolve those claims since 1999; and

WHEREAS, On May 15, 2004, Governor Dirk Kempthorne, the United States, and the Tribe announced a settlement and released the Term Sheet that was agreed to by all of the parties; and

WHEREAS, The Nez Perce Water Rights Settlement resolves all of the Tribe's water right claims in the SRBA, which includes: 1) a complete waiver of all instream flow claims, both on and off the reservation; 2) a complete waiver of all springs and fountains claims on private and State lands; and 3) a reserved consumptive use water right for on reservation purposes of 50,000 acre-feet; and

WHEREAS, The settlement preserves Idaho's sovereignty over its water resources, provides critical Endangered Species Act and Clean Water Act protections for Idaho water users, protects Idaho's agricultural economy and all existing water rights while allowing for future economic development, and avoids continued litigation over the Tribe's claims; and

WHEREAS, The settlement has widespread support from numerous industries and agricultural groups across the State of Idaho, including the Committee of Nine, the Idaho Water Resource Board, the Port of Lewiston, the City of Lewiston, the Ada, Bingham, Bonneville, Canyon, Elmore, Fremont, Madison, and Twin Falls county Farm Bureaus, the Idaho Association of Commerce and Industry, the Idaho Grain Producers Association, the Idaho State Grange, the J.R. Simplot Company, the Intermountain Forest Association, the Potato Growers of Idaho, the Milk Producers of Idaho, the Idaho Eastern-Oregon Seed Association, the Payette River Water Users Association, the Boise Project Board of Control, the Lewiston Chamber of Commerce, the Lewiston Orchards Irrigation District, the Twin Falls Canal Company, the North Side Canal Company, the Idaho Dairymen's Association, the Idaho Hay and Forage Association, the Idaho Mint Growers Association, the Potlatch Corporation, the Idaho Cattle Association, the Idaho Ground Water Appropriators, the Idaho Weed Control Association, the Idaho Sugarbeet Growers Association, the Idaho Cooperative Council, the Far West Agribusiness Association, the Wilder Farm Labor Committee, the Greater Idaho Falls Chamber of Commerce, the Food Producers of Idaho, the Wilder Irrigation District, the Idaho Wool Growers Association, and the Nez Perce County Commissioners; and

WHEREAS, The settlement was approved by the Board of Directors of the Idaho Water Users Association at its Spring 2004 meeting in Burley; and

WHEREAS, Congress ratified and approved the Settlement through adoption of the Snake River Water Rights Act of 2004; and

WHEREAS, The Idaho State Legislature ratified and approved the Settlement and implementing legislation during the 2005 Session; and

WHEREAS, The Nez Perce Tribe approved the Settlement in 2005.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association fully supports the Nez Perce Tribe Water Rights Settlement and implementation of the Term Sheet.

### **2017-10: ESPA Water Right Administration & Management**

WHEREAS, Reduced water flows from surface springs and reduced water levels in the aquifer indicate a decline in the Eastern Snake Plain Aquifer (ESPA); and

WHEREAS, the Director recently designated the ESPA as a "ground water management area" pursuant to Idaho Code § 42-233b; and

WHEREAS, Protection of prior water rights in the administration of Idaho's surface and ground water is required by law; and

WHEREAS, Efficient and defensible water right administration and management in accordance with the prior appropriation doctrine, including the use and continued innovation of new technology, is in the best interest of all citizens of the State of Idaho residing in the Snake River Basin; and

WHEREAS, After several years of work and revision, the Idaho Water Resources Research Institute (IWRRRI), funded by IDWR and guided by a technical advisory committee, has established an ESPA groundwater model; and

WHEREAS, The ESPA groundwater model is a useful tool for conjunctive administration and management of the surface and groundwater rights of the Eastern Snake River Plain, and continued legislative appropriation will be necessary for said effort.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports statewide conjunctive management of tributary ground and surface waters in accordance with the prior appropriation doctrine.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the 2015 Settlement Agreement entered into between the Surface Water Coalition (SWC) and participating members of the Idaho Ground Water Appropriators, Inc. (IGWA), including its continued implementation.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the Director's designation and management of the ESPA as a "ground water management area."

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports continued appropriations by the Idaho State Legislature for IDWR's use of the new ESPA model for water right administration and aquifer management.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges the Idaho Department of Water Resources to use the model and all other best available science to appropriately manage surface water and ground water in accordance with the prior appropriation doctrine as well as develop the appropriate rules to implement such management without delay.

### **2017-11: Corps of Engineers Policy on 404 Permits**

WHEREAS, As a result of a settlement agreement entered into between the Seattle District of the U.S. Army Corps of Engineers and the National Wildlife Federation, the U.S. Army Corps of Engineers has asserted that the decision rendered in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 536 (9<sup>th</sup> Cir. 2001) is binding upon the geographic jurisdiction of the 9<sup>th</sup> Circuit Court of Appeals, which includes Idaho; and

WHEREAS, The Corps of Engineers asserts that irrigation ditches, canals, laterals and drains are "waters of the United States" and that, pursuant to Section 404 of the Clean Water Act, permits (404 permits) are necessary for various types of work on irrigation ditches, canals, laterals and drains, including excavation, piping or lining during the non-irrigation season when those facilities may not contain water; and

WHEREAS, The Corps of Engineers has asserted that owners and operators of irrigation ditches, canals, laterals, drains and others may be required to obtain 404 permits for certain activities, despite exemptions, protections and allowances in the Clean Water Act, 33 U.S.C. § 1344(f), including the exemption "for the construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;" and

WHEREAS, The United States Supreme Court issued a decision in *Rapanos v. United States* that rejected the Corps' regulatory definition of "waters of the United States", and the concurring opinion issued by Justice Kennedy determined that until new regulatory guidance is issued the Corps must first establish, on a case-by-case basis, that a waterbody has a "significant nexus" with a navigable-in-fact waterway before asserting regulatory jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association opposes the assertion by the Corps of Engineers or other federal or state agency that irrigation ditches, canals, laterals and drains are "waters of the United States", opposes the view that fails to account for the Supreme Court's recent decision in *Rapanos v. United States* and opposes the position that a 404 permit is required for the discharge of dredge or fill material into irrigation ditches, canals, laterals and drains that are constructed and used for irrigation or drainage purposes.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes any attempts to limit the exemptions, protections or allowances of Section 404 of the Clean Water Act, including the exemption for the construction or maintenance of irrigation ditches, or the maintenance of drainage ditches.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the Regulatory Guidance Letter (RGL) issued by the U.S. Army Corps of Engineers in 2007.

### **2017-12: Department of Interior's Water Conservation Initiatives**

WHEREAS, The Department of the Interior and the United States Bureau of Reclamation (USBR) unveiled a new program in 2003 entitled "Water 2025" aimed at encouraging cooperating planning for preventing future water crises in the West; and

WHEREAS, During 2007 the Department of the Interior issued a related plan entitled "Water for America"; and

WHEREAS, during 2009 the Department issued yet another water conservation grant program called "Water Smart".

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges USBR to include additional storage projects as another tool to facilitate and implement its water conservation programs.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association encourages USBR to recognize and adhere to contractual obligations and state water law in implementing any aspect of these programs in the future.

### **2017-13: Unauthorized Storm Water Discharges & Encroachments**

WHEREAS, The Idaho Water Users Association is concerned that unauthorized urban storm water discharges into irrigation facilities is a serious problem for many of its member organizations; and

WHEREAS, The Idaho Water Users Association is further concerned that unauthorized encroachments of urban storm water discharged into facilities, easements, and rights-of-way is a serious problem for many of its member organizations; and

WHEREAS, Unauthorized urban storm water discharges and unauthorized encroachments impose upon irrigation entities substantial liability risks, increased maintenance costs, introduction of urban pollutants, exposure to major flooding events likely to cause substantial property damage and loss of life, major interruptions in water deliveries to patrons, and numerous additional cost increases, including litigation expenses; and

WHEREAS, The problems of unauthorized urban storm water discharges and unauthorized encroachments will become larger and more difficult to correct if immediate action is not taken to prevent the continuation of these problems; and

WHEREAS, The Bureau of Reclamation, cities, counties, planning and zoning commissions, highway districts and other government agencies have involvement and responsibility to help avoid unauthorized encroachments, including storm water discharges into irrigation facilities; and

WHEREAS, One of the purposes of the Idaho Water Users Association is to protect the interests of its members.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges that all necessary and appropriate actions be taken by the involved and responsible government agencies to address the problems of unauthorized urban storm water discharges into facilities owned or operated by irrigation entities and unauthorized encroachments into facilities, easements, and rights-of-way owned or operated by irrigation entities within the State of Idaho.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association recognizes that unauthorized urban storm water discharges and unauthorized encroachments in many cases constitute serious and substantial threats to the continued vitality and efficient operation of many of its member organizations and also may create a serious and substantial economic and public health risk to the citizens residing or working within the service area of irrigation entities or within the potential flood zone of the facilities owned or operated by those irrigation entities.

BE IT FURTHER RESOLVED, That unauthorized urban storm water discharges and unauthorized encroachments should be corrected as soon as possible in those cases where its member organizations are being adversely impacted.

### **2017-14: Preservation of the Right to Store Water**

WHEREAS, Established irrigation storage water rights provide essential sources of water for irrigation districts, canal companies, and other water delivery entities in the State of Idaho; and

WHEREAS, Irrigation storage water rights consist of the right to store water for irrigation use and the right to receive water from storage for irrigation use in accordance with the priorities of such rights; and

WHEREAS, Irrigation districts, canal companies, and other water delivery entities have entered contracts with the United States Bureau of Reclamation and paid for the construction of reservoirs in the State of Idaho based, in part, on the understanding that the storage water rights they acquired by such contracts would be administered in accordance with the priorities of such rights under Idaho law; and

WHEREAS, Water released from storage reservoirs for flood control purposes is not stored for irrigation use and is not delivered for irrigation use pursuant to irrigation storage water rights; and

WHEREAS, Methods of storage water right accounting that treat releases of water for flood control as beneficial use of irrigation storage water rights diminish irrigation storage water rights; and

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the preservation of the right to store water for irrigation use and the right to receive water from storage for irrigation use in accordance with the priorities of established irrigation storage water rights.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association is opposed to the diminishment and taking of irrigation storage water rights through accounting methods that treat water released from or passed through a reservoir for flood control purposes as beneficial use of irrigation storage water rights.

### **2017-15: Opposition to Condemnation of Irrigation / Drainage Facilities & Water Rights**

WHEREAS, Canal companies, irrigation districts, drainage districts, and other similar member organizations of the IWUA have provided the people of Idaho with essential, reliable and affordable delivery and drainage of irrigation water throughout the State's history and development; and

WHEREAS, These IWUA member organizations have successfully adapted their delivery and drainage systems to meet the agricultural and urban irrigation and drainage needs of Idaho communities; and

WHEREAS, Local governments and irrigation entities in the State of Idaho have a long, proud tradition of solving complex water resource problems in a cooperative fashion for the benefit of Idaho's residents; and

WHEREAS, It is important to maintain affordable, reliable supplies of irrigation water for the economic and social well-being of the State of Idaho; and

WHEREAS, The use of eminent domain to condemn the property rights and facilities of irrigation entities is an abuse of the governmental power of taking property for public uses; and

WHEREAS, Water users in the State of Idaho have successfully opposed and prevented the forced taking of irrigation water rights and storage water by the government in the past.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association opposes the use of eminent domain to condemn the property rights and facilities of irrigation entities; and

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges Idaho's local governments to follow the cooperative example set by other governmental entities in working with Idaho's irrigation and drainage entities to solve the State of Idaho's complex water resource problems.

### **2017-16: USBR Operation & Maintenance Activities**

WHEREAS, The United States Bureau of Reclamation operates and maintains important water supply and hydropower facilities throughout the State of Idaho; and

WHEREAS, Such facilities are aging and in need of major maintenance or restoration activities and, in some cases, the high cost of completing these maintenance projects are compounded by governmental, environmental, or endangered species requirements; and

WHEREAS, The Bureau of Reclamation plans, budgets, manages, allocates and passes the costs of project O&M and extraordinary maintenance or restoration activities on to their water user customers without significant involvement from the project beneficiaries.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges the Bureau of Reclamation to:

1. Work with their contractors in formulating O&M budgets and planning for extraordinary maintenance or restoration activities on applicable facilities well in advance of actual expenditures;
2. Account for and explain to their contractors, on a quarterly basis, actual O&M costs incurred for each applicable facility, including budget comparisons and other detailed cost accounting analysis as requested by the contractors;
3. Work with their contractors on planning, budgeting, bidding, and managing extraordinary maintenance and renovation activities on applicable facilities in order to contain costs and maximize benefits;
4. If requested by their contractors, utilize existing authority to allow the costs of extraordinary maintenance and renovation activities to be repaid by project beneficiaries over a period of up to 50 years, as the particular circumstances may warrant; and
5. Work with Congress and the Administration to obtain alternative funding sources to assist their contractors in covering the added costs or complying with environmental or species protection laws in maintaining and restoring Bureau of Reclamation facilities in the West.

### **2017-17: Yellowstone Cutthroat Trout ESA Petition**

WHEREAS, The Yellowstone cutthroat trout is present in the Upper Snake River drainage in various streams and rivers; and

WHEREAS, The State of Idaho, through the Idaho Department of Fish & Game, manages and has taken actions to preserve and improve the species survival; and

WHEREAS, Several environmental groups previously petitioned to list the species under the Endangered Species Act (ESA); and

WHEREAS, In February 2006, after conducting a status review of the species, the United States Fish & Wildlife Service (FWS) issued a proposed rule determining that listing the Yellowstone cutthroat trout as threatened or endangered was “not warranted”; and

WHEREAS, This final agency decision was not challenged in court by any person or entity; and

WHEREAS, Future listing of the Yellowstone cutthroat trout under the ESA stands to threaten continued water diversion and use in the Snake River Basin, including water storage operations at USBR’s Upper Snake Projects above Milner Dam.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports FWS’ decision to not list the Yellowstone cutthroat trout under the ESA and opposes any future efforts to list the species.

### **2017-18: Ririe Reservoir Flood Control Rule Curves**

WHEREAS, The flood control rule curves for Ririe Reservoir were developed prior to the time Ririe storage space was contracted; and

WHEREAS, The storage space in Ririe Reservoir is now contracted to Mitigation, Inc., an entity formed to mitigate the impacts to Upper Snake water users caused by the 1990 Fort Hall Indian Water Rights Agreement, and contracted space has proven to be unreliable and difficult to fill; and

WHEREAS, The enacting legislation allows for modification of flood control rule curves as additional information becomes available; and

WHEREAS, The Standard Operating Procedures state the flood control objective of Ririe Dam is “to provide adequate storage space in the reservoir to regulate stream flow downstream insofar as possible to a non-damaging level, and yet still provide a near full reservoir at the end of the flood season for irrigation and other project purposes”; and

WHEREAS, Conditions in the Willow Creek basin have changed since the flood control rule curves were developed, including the establishment of an annual maintenance schedule to keep Willow Creek Canal, Sand Creek Canal and the Willow Creek Floodway channel free of ice during the winter, and development of off-stream storage facilities; and

WHEREAS, The current flood control rule curves do not rely upon current or updated hydrologic conditions on Willow Creek; and

WHEREAS, The Standard Operating Procedures require cooperation between the USBR, USACE, IDWR, the Water District 1 Watermaster, water users, fish & game, local interests and others in order to provide maximum benefits for the region; and

WHEREAS, The water users of Water District 1 are dependent upon available water supplies and adjusting the flood control rule curves would increase the reliability of contracted storage supplies in Ririe Reservoir; and

WHEREAS, The USBR and USACE have completed the Phase 1 Study of Proposed Modifications of Flood Control Operations of Ririe Reservoir, which has shown how the re-evaluation of winter flood control operations could retain flood control benefits while also providing valuable storage benefits during some years, under the Alternative B; and

WHEREAS, The USBR has completed a 2014 Draft Environmental Assessment Ririe Winter Storage Study for Ririe Dam and Reservoir, which compares No Action to Alternative 1 with a finding of no adverse natural resource or socioeconomic impact; and

WHEREAS, Legislation, including the WIIN Act, has been passed by Congress to facilitate efforts to improve and update the Ririe Reservoir winter Flood Control Rule Curves to improve the water supplies for the water users.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association encourages the USBR and the USACE to change the flood control rule curves in Phase 2 of the Ririe Reservoir Study based on the hydrologic analysis completed in Phase 1 of the study, to better match the current conditions in the Willow Creek basin and to allow for a more dependable contracted storage supply in Water District 1 and providing for full mitigation of the impacts resulting from the 1990 Fort Hall Agreement; and

BE IT FURTHER RESOLVED That the Idaho Water Users Association supports changing the authorization of the Ririe Reservoir Project to more properly balance Ririe Reservoir water supply and irrigation supplies with adequate flood control.

### **2017-19: Critical Habitat Designations**

WHEREAS, Pursuant to the Endangered Species Act (ESA), NOAA Fisheries and the U.S. Fish & Wildlife Service (FWS) have designated or have proposed to designate critical habitat for various listed plants or animal species, including but not limited to Snake River salmon and steelhead, bull trout, and the Western Yellow-billed cuckoo; and

WHEREAS, Certain critical habitat designations cover broad areas unoccupied by the listed species or are otherwise unnecessary for the species survival and recovery; and

WHEREAS, Critical habitat designations have the potential for profound and devastating economic impacts upon various industries in Idaho as documented during the 2005 and 2010 critical habitat designation processes for bull trout; and

WHEREAS, NOAA Fisheries and FWS must adequately consider the economic impacts of its critical habitat designations pursuant to the ESA, including those areas that are not occupied by listed species; and

WHEREAS, NOAA Fisheries and FWS may exclude any area from critical habitat if the benefits of the exclusion outweigh the benefits of inclusion where such exclusion would not result in extinction of the species.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association opposes any critical habitat designations for listed plants or animal species by NOAA Fisheries and FWS that are contrary to the purposes of the ESA and that do not adequately consider the economic impacts of such designations on the local economies of the State of Idaho.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association encourages NOAA Fisheries and FWS to exclude waters, including the mainstem Snake River, its tributaries and reservoirs, from their critical habitat designations where the benefits of exclusion outweigh the benefits of inclusion.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes any critical habitat designations by NOAA Fisheries and FWS that adversely impact the economies of entities that hold contracts to stored water in U.S. Bureau of Reclamation projects; and

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports and encourages efforts to remove existing critical habitat designations from reservoirs and other waters upon which irrigators and other water users rely.

### **2017-20: State Funding for Aquifer Management Plans**

WHEREAS, In 2004 the Idaho Legislature passed House Concurrent Resolution No. 56 which expanded the scope and membership of the Natural Resources Interim Committee; and

WHEREAS, HCR 56 further identified that aquifers in many areas of Idaho continue long-term declines, threatening economic well-being and creating legal conflicts; and

WHEREAS, The committee was charged to conduct a study regarding water supply and management issues in aquifers across Idaho; and

WHEREAS, The committee created several working groups to develop a framework for management of the aquifers in the Moscow/Pullman, Rathdrum Prairie, Treasure Valley, Mountain Home, Bear River, and Eastern Snake River plain areas; and

WHEREAS, Those working groups held meetings, conducted various studies, and issued reports; and

WHEREAS, Proper management and protection of these aquifers is vital to ensure the long-term sustainability of the various water supplies and the water rights and uses that rely upon those supplies; and

WHEREAS, Proper aquifer management requires identification of water supply budgets, goals, and objectives, as well as actions and funding to implement those goals and objectives; and

WHEREAS, In 2008, the Idaho State Legislature approved House Bills 428 and 644, establishing the Statewide Comprehensive Aquifer Management Planning Program and creating a fund to support the effort; and

WHEREAS, In 2014, the Governor and the Idaho State Legislature restored funding for the statewide Comprehensive Aquifer Management Planning Program; and

WHEREAS, Scarce financial resources should not be used for purposes outside the intended scope of House Bills 428 and 644.

NOW, THEREFORE BE IT RESOLVED, That the Idaho Water Users Association supports continued legislative funding of aquifer management plans and actions to ensure the long-term sustainability of the aquifers in the Moscow/Pullman, Rathdrum Prairie, Treasure Valley, Wood River, Mountain Home, Bear River, and Eastern Snake River plain areas.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes the use of Aquifer Management Planning funds for purposes other than those intended by the Idaho Legislature.

### **2017-21: United States Bureau of Reclamation – Legal Obligations**

WHEREAS, The United States Bureau of Reclamation (USBR) has entered into numerous contracts with irrigation districts, canal companies, and other water delivery entities in the State of Idaho to store and deliver water for irrigation; and

WHEREAS, USBR is legally obligated to follow the terms and conditions of these contracts; and

WHEREAS, Concerns have been raised over USBR's operations at Palisades Reservoir and the effect of those operations on the fishery of the South Fork of the Snake River; and

WHEREAS, USBR has previously identified and addressed these concerns and continues to be mindful of the fishery resource of the South Fork of the Snake River when operating Palisades Reservoir; and

WHEREAS, USBR has completed a study of the hydrologic conditions in the South Fork, entitled the Ecologically Based System Management Project (EBSM); and

WHEREAS, USBR continues to annually fund work related to the EBSM, which may no longer be necessary due to the past data collection and work spanning several years with a variety of hydrologic conditions, or which costs should be funded by the State of Idaho for the benefit of all citizens; and

WHEREAS, Past management of the reservoirs, including Palisades Reservoir, has been called into question by the water delivery entities; and

WHEREAS, Water District 1 has implemented a sub-committee to work with USBR to ensure that the legal and contractual obligations to the water delivery entities are adhered to in management of the reservoirs.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the various contracts between irrigation entities and USBR and urges USBR to continue to adhere to these contracts when operating the reservoirs, including Palisades Reservoir.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes any effort by USBR to use the results of the EBSM project to change operations to require certain instream flows in violation of state water law or in breach of any contracts with irrigation entities.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges the State of Idaho to review and fund necessary actions implemented as part of the EBSM which currently may only be funded by spaceholders and USBR.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes USBR'S continued efforts to fund or implement programs not required by contract or that are no longer necessary.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the efforts of Water District 1 to ensure that the legal and contractual obligations to the water delivery entities are adhered to in management of the reservoirs.

### **2017-22: Cloud Seeding**

WHEREAS, Winter time cloud seeding for precipitation enhancement is a proven, cost effective technology that has been in use around the world for over 50 years; and

WHEREAS, Cloud seeding can increase seasonal target-area precipitation during the winter from 5 to 15% which will in turn improve stream flows and reservoir fill in the watershed of the target-area;

WHEREAS, Since the 1980's in southeastern Idaho there is an on-going cloud seeding program sponsored by the High Country Resource and Conservation Development Area, Inc. that targets the Camas Creek (Clark County) and upper Snake River watersheds in Idaho; and

WHEREAS, There is an existing cloud seeding program in the Payette River Basin; and

WHEREAS, Cloud seeding programs are being developed on the Boise River and Wood River; and

WHEREAS, Idaho Power Company is a partner in each of these programs; and

WHEREAS, The Idaho Water Resource Board has provided cost sharing for cloud seeding infrastructure; and

WHEREAS, The Bureau of Reclamation is deciding if it should play a role in cloud seeding.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association support and encourage existing and future cloud seeding programs in the state of Idaho; and

BE IT FURTHER RESOLVED, That the Idaho Water Users Association encourages the Bureau of Reclamation and Idaho Water Resource Board to participate with Idaho water users in the development and operation of these programs for the benefit of Idaho water users.

### **2017-23: State of Idaho Invasive Species Program**

WHEREAS, invasive species pose a threat to the State of Idaho, its natural resources, and local economies; and

WHEREAS, invasive aquatic species like Quagga and Zebra mussels, are especially threatening to the State of Idaho's waterways, water users, and its agricultural economy; and

WHEREAS, the Snake River and Columbia River basins are currently free of such invasive aquatic species; and

WHEREAS, infestations of Quagga and Zebra mussels are well documented in other states throughout the country, notably the lower Colorado River basin; and

WHEREAS, these species were also recently found in waterbodies in the State of Montana, which poses a particular concern to Idaho water users; and

WHEREAS, the Idaho Legislature enacted the "Idaho Invasive Species Act of 2008" to assist in prevention, early detection, rapid response and eradication of invasive species; and

WHEREAS, maintaining and even enhancing the existing level of preventive and protective measures implemented by the State of Idaho is vital to all Idaho water users; and

WHEREAS, supporting and coordinating efforts to prevent the spread of invasive species, especially aquatic invasive species, benefits all Idaho water users.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the State of Idaho's invasive species program and local initiatives to prevent the infestation of invasive species, especially aquatic invasive species.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports continued legislative funding of the Idaho State Department of Agriculture's program and prevention strategy, including watercraft inspection, monitoring surveys, and outreach/education to boaters.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the current inspection and prevention programs, as well as enhancement of such programs to protect Idaho's waterways.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges and supports coordinated efforts between the states and federal agencies to eradicate aquatic invasive species and prevent their spread to the State of Idaho.

# 2018 Resolutions

## 2018-1: Salmon Falls Creek Wild & Scenic River Status

WHEREAS, The United States Bureau of Land Management (BLM) is currently considering inclusion of portions of Salmon Falls Creek in a Wild and Scenic Rivers Act (Act) suitability study; and

WHEREAS, Those portions of Salmon Falls Creek under consideration include areas that do not meet the eligibility requirements of the Act in that they are not “free-flowing,” the adjacent land does not possess any “outstanding remarkable” values, and the area is not predominantly managed by the BLM; and

WHEREAS, Inclusion of those portions of Salmon Falls Creek under consideration in a suitability study would result in steps being taken by the BLM to protect the included portions of the Creek; and

WHEREAS, Such protective measures would have a negative impact on continued and future use of the Creek by Idaho residents.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association encourage the BLM to recognize that those portions of Salmon Falls Creek currently under consideration are ineligible for inclusion in the Wild and Scenic Rivers Act System and to exclude them from any suitability study.

## 2018-2: State Sovereignty

WHEREAS, Water is the primary economic and social resource affecting each of the arid Western States, the allocation of which determines the future of each Western State’s economic, environmental, social and cultural fortunes; and

WHEREAS, Each Western State has developed comprehensive systems for the appropriation, use and distribution of water tailored to its unique physiographic, hydrologic and climatic conditions found within that state; and

WHEREAS, The United States does not have a water management system that is equivalent to those of the Western States for the appropriation, use or distribution of water; and

WHEREAS, Congress has consistently recognized the primacy of state water law because of the need for comprehensive water management systems tailored to the unique needs and characteristics of the individual states; and

WHEREAS, Congress enacted the McCarran Amendment, 43 U.S.C. §666, to allow the joinder of the United States in state general stream adjudications and Congress intended the United States to be subject to the same procedures as all other water right claimants joined in state general stream adjudications; and

WHEREAS, Many of the Western States are conducting general stream adjudications for the purpose of quantifying all water right claims in accordance with the McCarran Amendment; and

WHEREAS, The United States is often the largest claimant of water rights in these general stream adjudications and the adjudication of federal water right claims requires a large commitment of time, effort and resources by the state courts and by state agencies; and

WHEREAS, The adjudication of water right claims is absolutely essential for the orderly allocation of water in all the Western States where state law is based on the prior appropriation doctrine; and

WHEREAS, Many of the Western States’ general stream adjudication procedures require claimants to pay a fee to offset the states’ expenses arising from state general stream adjudications; and

WHEREAS, Citing to *United States v. Idaho* the United States claims immunity from the payment of adjudication filing fees required of all other claimants to offset the state’s judicial and administrative expenses in conducting general stream adjudications; and

WHEREAS, For the United States to be immune from sharing in the expenses of these proceedings constitutes an unfunded federal mandate to the states; and

WHEREAS, The United States contends that it cannot be joined in state administrative or judicial proceedings with respect to water rights it has acquired under state law other than pursuant to the McCarran Amendment, 43 U.S.C. §666; and

WHEREAS, It is inefficient and wasteful to require that a separate lawsuit be commenced for the sole purpose of regulating water rights acquired by the United States under state law; and

WHEREAS, The United States claims it is also immune from paying fees to states that are required of all other water users for the appropriation, use or distribution of water; and

WHEREAS, Equity and fairness dictate that federal agencies who voluntarily seek to appropriate water pursuant to state law, or who acquire water rights based on state law, should be required to comply with state law, including the payment of fees, to the same extent as all other claimants; and

WHEREAS, Idaho water users and the State of Idaho have spent considerable sums of time, effort and money attempting to negotiate and litigating against federal and tribal claims filed in the Snake River Basin Adjudication; and

WHEREAS, The federal government, specifically, the U.S. Bureau of Reclamation, has a statutory and contractual obligation to protect water stored in federal reservoirs for the benefit of spaceholders.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports passage of legislation that at a minimum provides for the following:

1. Requires the federal government to participate in all state administrative and judicial proceedings with respect to water rights it acquires to the same extent as all other claimants.
2. Requires the federal government to pay filing fees as well as comply with all other state substantive and procedural water right adjudication laws to the same extent as all other claimants.
3. Requires the federal government to pay applicable fees as well as comply with all other state substantive and procedural laws for the appropriation, use and distribution of water rights to the same extent as all other claimants.
4. Provides for state administration of all water rights.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association also urges Congress to appropriate money for payment of unpaid fees to states that have incurred expenses as a result of processing federal claims or federal objections to private claims in state general stream adjudications.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association also urges Congress to appropriate funds to help protect water stored in federal reservoirs for the benefit of spaceholders from federal and tribal claims filed in general stream adjudications.

### **2018-3: Clean Water Act**

WHEREAS, The United States Congress is presently considering reauthorization of the Clean Water Act; and

WHEREAS, Such reauthorization may significantly impact water users and the agricultural community of the State of Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges Congress and the administration to incorporate the following principals in any activities regarding the Clean Water Act:

1. Section 101(g) should be reaffirmed as applying to all sections of the Clean Water Act and any new or altered programs resulting from the Clean Water Act reauthorization;
2. Neither the Corps of Engineers nor EPA nor any other federal agency or officer shall utilize any provision or program under the Clean Water Act to allocate or reallocate quantities of water or to require that specified levels of assimilative capacity, dilution water or instream flows or minimum lake or reservoir levels remain in the water body;
3. No provision or program of the Clean Water Act shall be construed or applied to authorize a taking of any interest in water created pursuant to state law;
4. Section 404 protections and allowances for water dependent activities should be expanded, particularly with regard to permitting for facilities, which are related to the exercise of state created water rights. Section 404 should continue to include the de minimis exception to the "discharge of dredged material" and the exemption of "incidental fall back";
5. The Corps should adopt simplified procedures for issuing general and nationwide permits for transferring 404 permit authority to states. Certain categories of water such as headwaters, isolated waters, and certain intrastate waters should be excluded from permit requirements;
6. The Corps or EPA may not prohibit or in any way restrict or condition water diversions, depletions, or the consumptive use of water or water rights, which are authorized or decreed under state law;
7. The EPA and the Fish and Wildlife Service must establish guidelines which provide objective mitigation criteria, allow pre-mitigation and defer to the Corps in matters of engineering, economics or other technical areas within their expertise;
8. Section 404 and wetland jurisdiction should be limited so that it does not apply to water surfaces and water related vegetation areas created artificially incidental to irrigation, hydropower and water supply projects;
9. All relevant agencies, including EPA, shall participate in pre-application consultations and shall continue to work constructively with applicants to resolve problems;
10. Section 404 should provide for routine on-going maintenance activities to be covered by the initial permit process eliminating periodic new permits that may now be required for repetitious maintenance activities;

11. Reasonable best management practices (BMP) should be the means by which Clean Water Act programs are to be pursued for non-point sources. The states should have primary responsibility for identifying and administering BMP. Any BMP shall be defined as a voluntary program. Federal funds should be made available on a cost-share basis for implementing such BMPs;
12. The identification and implementation of any antidegradation policy including but not limited to the designation of outstanding resource waters shall be a state prerogative so long as existing beneficial uses, as identified by the state, are maintained and protected;
13. Any Clean Water Act program designed to regulate pollution on a watershed basis shall be based upon the control of the discharge of pollutants so as to protect the beneficial uses identified by the state;
14. Congress shall address water conservation and water use efficiency measures separately and independently of the Clean Water Act so that such measures may be evaluated on their own merits rather than tied to permit or grant and loan programs under the Clean Water Act;
15. No provision of the Clean Water Act should allow a state or Indian tribe to apply its water quality standards in such a fashion as to supersede, impair or abrogate the water allocation system of another state or tribe or waters decreed thereunder or to cause an unreasonable economic burden to be placed on any other entity;
16. Clean Water Act provisions shall not be applied to irrigation delivery or conveyance systems or irrigation return flows. Existing non-point sources shall remain as non-point sources under any program adopted under the Clean Water Act. Entities owning such irrigation delivery or conveyance facilities shall be permitted to control or regulate the quality of such return flows and to develop cooperative programs with water users;
17. Any legislation adopted by Congress for protection of wetlands include a prioritization of wetlands according to usefulness to nature, a wetlands banking program and a process for practical and economically feasible wetlands impact mitigation;
18. Proposed regulations regarding total maximum daily loads should be subject to public review and comment as provided for by State law;
19. Use of aquatic pesticides in irrigation systems should not require issuance of a NPDES permit. Compliance with FIFRA and applicable label requirements is sufficient to safeguard environmental concerns. In addition, the use of aquatic pesticides in irrigation systems is part of the irrigation return flow exemption in the Clean Water Act;
20. Any rules, regulations or legislation enacted by the federal government regarding its jurisdiction under the Clean Water Act should expressly acknowledge and return the term "navigable", consistent with the United States Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. Corps and Rapanos v. United States*; and
21. Water contained in canals, laterals, pipes, and natural drainages and drains, seep tiles, and other irrigation and water delivery facilities should not be considered "waters of the United States" by EPA, the Corps, DEQ and other federal and state agencies.

#### **2018-4: EPA Policy on Aquatic Herbicides**

WHEREAS, Many irrigation districts, canal companies, and water delivery entities in Idaho apply aquatic herbicides to their systems to insure safe and efficient delivery of water; and

WHEREAS, Many governmental entities and private companies apply insecticides, herbicides, and pesticides to protect public health and prevent the spread of pests, insects, and diseases, including recent documented cases of the West Nile virus; and

WHEREAS, Application of these various insecticides, herbicides, and pesticides is vital to crop health and farming operations in the State of Idaho; and

WHEREAS, Application of these herbicides is regulated by the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, Rodenticide and Algaecide Act (FIFRA); and

WHEREAS, A 2001 decision in the Ninth Circuit Court of Appeals (*Headwaters v. Talent*) determined that the application of aquatic herbicides into canal systems constitutes a discharge of a pollutant from a point source which requires an NPDES permit under the Clean Water Act (CWA); and

WHEREAS, EPA issued guidance to its Regional Administrators in March 2002 clarifying that application of aquatic herbicides consistent with the FIFRA label to ensure the passage of irrigation return flow is a nonpoint source activity not subject to NPDES permit requirements under the CWA: and

WHEREAS, A 2003 decision in the Ninth Circuit Court of Appeals (*League of Wilderness Defenders v. Forsgren*) determined that application of aerial pesticides onto national forests constitutes a discharge of a pollutant from a point source which requires an NPDES permit under the CWA; and

WHEREAS, In February 2005 EPA responded to the uncertainty created by various court decisions and EPA issued a proposed rule to add exceptions to the list of discharges in 40 CFR 122.3 that are excluded from NPDES permit requirements; and

WHEREAS, EPA in November 2006 issued a final rule exempting certain applications of pesticides, which includes aquatic herbicides, from the NPDES permit requirements; and

WHEREAS, Environmental groups immediately filed suit challenging the legality of EPA's final rule; and

WHEREAS, The legal challenges to EPA'S final rule were consolidated in the Sixth Circuit Court of Appeals; and

WHEREAS, The Sixth Circuit Court of Appeals invalidated the rule during 2009; and

WHEREAS, EPA requested and was granted a stay of the decision until April, 2011 to allow time for the development of NPDES permits; and

WHEREAS, Intervenor parties representing the agricultural and water user community petitioned the U.S. Supreme Court to review and reverse the Sixth Circuit's decision to invalidate the rule; and

WHEREAS, The U.S. Supreme Court refused to hear the case; and

WHEREAS, EPA has issued a final Pesticide General Permit on October 31, 2011 to govern the use of aquatic herbicides under the Clean Water Act; and

WHEREAS, The Pesticide General Permit includes additional use restrictions as the result of Endangered Species Act consultations with the National Marine Fisheries Service and additional restrictions may be imposed by the U.S. Fish and Wildlife Service as the result of additional ongoing consultations; and

WHEREAS, Legislation has been introduced in Congress to make clear that compliance with FIFRA is sufficient for the use of aquatic herbicides.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports additional administrative action by EPA clarifying that application of pesticides in irrigation facilities consistent with the FIFRA label to control pests is not subject to NPDES permit requirements under the CWA.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes any litigation seeking to apply NPDES permit requirements to the use of aquatic herbicides in irrigation facilities.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges Congress to adopt legislation clarifying that compliance with FIFRA is sufficient.

### **2018-5: Endangered Species Act**

WHEREAS, The Federal Endangered Species Act is clearly designed to support maintaining endangered or threatened species through artificial propagation; and

WHEREAS, Special interest groups use the Act to obstruct beneficial water resource projects; and

WHEREAS, The appropriate federal agencies do not adequately or appropriately administer the act; and

WHEREAS, Recovery plans for threatened and endangered species is a federal obligation but can be delegated to or developed in cooperation with states.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports revision and amendment and implementation by the Administration of the Endangered Species Act of 1973 to:

1. Require that when a species is listed, the lead federal agency simultaneously publish a recovery plan that identifies the actions necessary for recovery, the cost of recovery, the probability of recovery if actions are taken, the activities that are subject to Section 7 Consultation as a result of the listing, the reasonable and prudent alternatives needed to avoid jeopardy, if any, and the potential economic impacts of recovery;
2. Require that the agency specify only reasonable and prudent alternatives contained in approved recovery plans if alternatives are needed to avoid jeopardy;
3. Require the agency to prepare and publish a detailed decision document containing all data concerning the designation of a species, sub-species, critical habitat, finding of jeopardy or recovery plan;
4. Require the agency to include economic considerations as well as scientific data in a determination of the value of listing a species for either threatened or endangered status;
5. Provide that cooperative agreements between federal, state, local, agencies and water supply entities shall be deemed a substitute for listing conservation or recovery plans;
6. Protect only those sub-species which are significantly different genetically from the primary species;

7. Require periodic reviews of designated critical habitat and species listing to determine if such designations are still appropriate, but the Secretary of Interior and Secretary of Commerce should not be permitted to designate by regulation waters to which the United States exercises sovereignty as critical habitat that would impact non-federal waters or entities;
8. Require that where land or water resources are needed for recovery of listed species the federal government be responsible for providing the habitat in accordance with Section 5 of the Act and applicable state laws; however, no provision or program of the Endangered Species Act shall be construed or applied to authorize a taking or deprivation of any state created interest in water or water rights;
9. Provide exemptions for operation and maintenance and emergency repair of existing water facilities; and
10. That when petitioned by an affected State Legislature or Governor the agency take immediate steps to review, document and, where appropriate, rescind its previous action in administration of the Endangered Species Act of 1973 as amended.

#### **2018-6: Snail ESA Petitions**

WHEREAS, The United States Fish & Wildlife Service (FWS) listed several snail species in the Middle Snake River as threatened or endangered in 1992, including the Bliss Rapids snail, the Idaho springsnail, the Snake River physa, the Utah valvata, and the Banbury Springs lanx; and

WHEREAS, The initial ESA listing determinations were made without comprehensive studies or surveys about the five snail species; and

WHEREAS, These ESA listings may potentially impact water diversion and use throughout the Snake River Basin as well as continued water storage operations in the United States Bureau of Reclamation's (USBR) projects above Brownlee Dam; and

WHEREAS, Recent studies and data collection efforts in the Middle Snake River and elsewhere questions the basis for the original listing decisions; and

WHEREAS, The State of Idaho Office of Species Conservation and Idaho Power Company filed a petition to delist the Idaho springsnail in June 2004 on the basis of a taxonomic revision for the species by Dr. Robert Hershler of the Smithsonian Institute; and

WHEREAS, The taxonomic revision reveals the Idaho springsnail, the Jackson Lake springsnail, the Harney Lake springsnail, the Columbia springsnail, and another snail species actually constitute the same snail species; and

WHEREAS, Several environmental groups filed a petition to list Jackson Lake springsnail, the Harney Lake springsnail, and the Columbia springsnail in July 2004; and

WHEREAS, In 2007 FWS removed the Idaho springsnail from the federal list of endangered and threatened species and further determined the petition to list the Jackson Lake springsnail, the Harney Lake springsnail, and the Columbia springsnail as threatened or endangered was "not warranted"; and

WHEREAS, In 2010 FWS removed the Utah Valvata from the federal list of endangered and threatened species; and

WHEREAS, Removing the five snail species from the ESA endangered and threatened list is in the best interests of all water users in the Snake River Basin.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the State of Idaho's and Idaho Power Company's petitions to delist the Idaho springsnail and the Utah Valvata, including the delisting rules issued by FWS.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports petitions to delist the Bliss Rapids snail, the Snake River Physa, and the Banbury Springs limpet.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes any petitions to list the Jackson Lake springsnail, the Harney Lake springsnail, and the Columbia springsnail.

#### **2018-7: NMFS Salmon / Steelhead Listings / Hatchery Policy**

WHEREAS, NOAA Fisheries has certain duties with respect to endangered and threatened anadromous fish in Idaho; and

WHEREAS, NOAA Fisheries first listed Snake River sockeye, fall chinook, and spring/summer chinook, and Snake River steelhead under the Endangered Species Act (ESA) in the 1990s; and

WHEREAS, NOAA Fisheries' listing polices for anadromous fish have been inconsistent with respect to consideration of hatchery reared fish; and

WHEREAS, The ESA listing of the Snake River salmon and steelhead has resulted in the institution of a "flow augmentation" program to provide water from the Upper Snake River Basin above Brownlee Reservoir to the lower Snake and Columbia Rivers for salmon and steelhead migration; and

WHEREAS, Under USBR's "flow augmentation" program, millions of acre-feet of water has been provided from the Upper Snake River Basin Reservoirs consistent with various biological opinions; and

WHEREAS, Various entities in the Pacific Northwest have petitioned NOAA Fisheries to delist certain anadromous fish stocks; and

WHEREAS, NOAA Fisheries issued proposed listing determinations for 27 West Coast Salmonid ESUs, including Snake River fall and spring/summer chinook and steelhead, in June 2004; and

WHEREAS, NOAA Fisheries also issued a policy on considering hatchery fish in ESA listing determinations; and

WHEREAS, NOAA Fisheries listed Snake River sockeye as "endangered", and the Snake River fall chinook, spring/summer chinook, and steelhead as "threatened" despite increasing numbers of returning adult salmon and steelhead; and

WHEREAS, The basis for NOAA Fisheries' listing determinations did not properly consider hatchery fish in assessing each species' extinction risk; and

WHEREAS, NOAA Fisheries' hatchery fish policy and its treatment of hatchery fish in the proposed listing determinations is legally questionable; and

WHEREAS, The continued listing of Snake River salmon and steelhead under the ESA is not in the best interests of Idaho's water users.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges NOAA Fisheries to revise its hatchery policy and listing determinations for Snake River salmon and steelhead in conformance with the ESA.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges NOAA Fisheries to remove Snake River salmon and steelhead from the Endangered Species list.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports legal action to overturn NOAA Fisheries' proposed hatchery policy and listing determinations.

### **2018-8: Idaho Department of Water Resources Funding**

WHEREAS, State funding for the Idaho Department of Water Resources has not been adequate to keep pace with inflation and other increasing costs, especially when compared to other state agencies and the private sector; and

WHEREAS, Engineers, hydrologists and other specialized, technical positions at the Department are important for dealing with the critical water issues facing the State of Idaho, including urbanization, water right administration, conjunctive administration and environmental demands; and

WHEREAS, The Idaho Department of Water Resources has lost numerous valuable employees and is not able to attract high quality new employees for these technical positions because of the wide difference in salary when compared to other state agencies and the private sector; and

WHEREAS, Unless the Idaho Department of Water Resources is adequately funded it cannot carry out its mandated responsibilities or shoulder new responsibilities as the water resources of the state become more valuable and scarce.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports adequate funding for the Idaho Department of Water Resources, in order to bring the agency to parity with other state agencies and the private sector, and to fulfill its mandated responsibilities.

### **2018-9: Additional Storage**

WHEREAS, Water is the most precious natural resource of the State of Idaho; and

WHEREAS, Idaho water users have been experiencing shortages in water availability and deliveries in recent years; and

WHEREAS, Continued, unprecedented drought, population growth and urban development, conjunctive administration, Endangered Species Act requirements and other additional demands are being placed on the already scarce water resources of the State; and

WHEREAS, Idaho stores a small percentage of its annual run-off in comparison with other states; and

WHEREAS, Additional storage would be beneficial for Idaho water users for irrigation, domestic, municipal, commercial, industrial, recreation, flood control, resident fisheries, wildlife and other purposes; and

WHEREAS, New storage reservoirs can take many years to plan, design, and construct; and

WHEREAS, The Teton Dam, Minidoka Dam enlargement, Twin Springs Dam, Galloway Dam, and Lost Valley Dam were initially identified by the Director of the Idaho Department of Water Resources as potential projects that could be constructed; and

WHEREAS, Studies have been undertaken indicating that there are potential storage sites which would provide significant additional storage to water users in the State of Idaho, which can be built safely and economically, and which will provide significant long-term benefits to the State of Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports efforts to identify, study, and build additional water storage projects in the State of Idaho.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association encourages the Idaho Department of Water Resources and the Idaho Water Resource Board, in cooperation with other interested federal and State agencies, local governments, water users and other citizens, to study potential storage projects, identify those that have the most benefits to the State of Idaho, and develop funding strategies to move forward with the planning, design, and construction of those projects.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association urges the Governor and Legislature of the State of Idaho to allocate State funding and commit additional resources as necessary to assist in carrying out these objectives.

### **2018-10: Boise River Storage Projects**

WHEREAS, In the last several years, the Boise River Valley has experienced tremendous population growth and growth in industry, leading to increased demands for water for irrigation, domestic, municipal, commercial, industrial, recreation, and in-state fish and wildlife purposes; and

WHEREAS, Additional flood control is necessary to protect development in the Boise Valley, particularly in and around Eagle and Star, Idaho; and

WHEREAS, Water users in the Boise River Valley, along with the state and federal agencies have been examining and studying potential storage sites in the Boise River Valley; and

WHEREAS, These studies have identified several potential new storage sites and raises of existing dams that are economically feasible for the Boise River Valley.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the efforts to identify, study, and build new storage in the Boise River Valley.

### **2018-11: Bear River Narrows Hydroelectric Project**

WHEREAS, Twin Lakes Canal Company is proposing to construct the Bear River Narrows Hydroelectric Project (Project) located near Preston, Idaho, which will form a reservoir on Bear River below Oneida Dam; and

WHEREAS, The Project will improve water conservation by replacing open canals with closed pipelines; and

WHEREAS, The Project will provide for storage and improved water supplies in the event of emergency drought conditions; and

WHEREAS, The Project will provide minimum stream flows to Mink Creek year round and reduce Bear River flow variations caused by the upstream Oneida project; and

WHEREAS, The Project will produce an estimated 50,000 megawatt hours of power annually in an average water year.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports the Twin Lakes Canal Company in its efforts to obtain FERC approval of the Bear River Narrows Hydroelectric Project.

### **2018-12: Columbia River Treaty Review**

WHEREAS, The Columbia River Treaty was signed by the United States and Canada in 1961 and implemented in 1964; and

WHEREAS, The purpose of the Treaty was to reduce impacts from flooding and to increase power generation; and

WHEREAS, The U.S. and Canadian Entities are reviewing the Treaty to determine whether portions of it should be modified or terminated; and

WHEREAS, The Canadian Entity has taken the position that, beginning in 2024, all U.S. storage projects in the Columbia River Basin, including irrigation reservoirs in Idaho, must be utilized for system-wide flood control before Canadian reservoirs are "called upon" to provide any flood control space; and

WHEREAS, The U.S. Entity has proposed "modernizing" the Treaty to include ecosystem-based function as a third primary purpose of the Treaty, along with the original purposes of flood control and power generation; and

WHEREAS, Idaho Stakeholders, including water users, have prepared a Position Statement regarding any proposed modernization of the Treaty, taking positions that (i) the "Canadian Entitlement" should be rebalanced, (ii) post-2024 flood control operations should be negotiated to provide no greater impacts on Idaho's water systems and to protect existing authorizations and uses, (iii) ecosystem function should not be included in the Treaty, and (iv) the United States should proceed with a sense of urgency to reach agreement on the Canadian Entitlement and post-2024 flood control operations; and

WHEREAS, both the United States and Canadian governments have appointed new chief negotiators and have expressed an intent to begin formal negotiations on a modernized Treaty in early 2018.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges the U.S. Department of State to support the following positions in negotiations with Canada regarding any modification or future implementation of the Columbia River Treaty:

1. Recognize and protect the value of irrigated agriculture in the United States.
2. Advocate that only U.S. projects specifically authorized by Congress for system-wide flood control may be required to provide such benefits under the Treaty, and that irrigation reservoirs in Idaho are not authorized, and will not be used, for such purposes.
3. Recognize the ecosystem benefits that have already been provided by U.S. storage projects pursuant to the Endangered Species Act and other federal laws and refrain from advocating for additional ecosystem contributions from U.S. projects. Specifically, Idaho irrigation projects protected under the Nez Perce Water Rights Agreement should not have additional burdens imposed upon them.

### **2018-13: Food Safety Modernization Act**

WHEREAS, The Food Safety Modernization Act (FSMA) was approved by Congress in 2010 and signed into law in 2011; and

WHEREAS, The Food and Drug Administration (FDA) has adopted rules to implement FSMA; and

WHEREAS, FDA's Produce Rule requires that irrigation water used to grow over 200 varieties of fresh produce must meet numeric water quality standards for primary contact recreation; and

WHEREAS, The rule further requires water users to test their irrigation water and implement measures to meet the numeric water quality standards for primary contact recreation; and

WHEREAS, The rule further requires water users to treat irrigation water so that it meets the required recreation standard, to obtain an alternative irrigation water supply that meets the standard, or to implement a die-off protocol; and

WHEREAS, Compliance with the rule will be impossible or impractical throughout much of Idaho; and

WHEREAS, Application of the rule could eliminate many existing surface irrigation water supplies from continued use for the growing of fresh produce in Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association opposes FDA's Produce Rule, including the adoption of numeric water quality standard for irrigation water.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the enactment of legislation by Congress to prohibit FDA from adopting or implementing any numeric water quality standard for irrigation water.

### **2018-14: Endangered Species – Salmon / Steelhead**

WHEREAS, NOAA Fisheries listed several salmon and steelhead stocks in Idaho as threatened or endangered under Endangered Species Act in the early 1990s; and

WHEREAS, the listings have led to various federal regulatory actions and programs, including a proposal to acquire an additional 1 million acre-feet for flow augmentation, changing the nature of use of storage water in certain reservoirs, refusing to contract uncontracted storage space, and formal consultation between NOAA Fisheries and the U.S. Bureau of Reclamation (USBR) over operation and maintenance of various projects; and

WHEREAS, USBR has been able to lease up to 487,000 acre-feet for flow augmentation in the Lower Snake River through local rental pools and the Idaho State Water Supply Bank as authorized pursuant to Idaho Code § 42-1763A and B; and

WHEREAS, NOAA Fisheries issued a final biological opinion in 2008 regarding USBR's operations in the Upper Snake River Basin above Brownlee Reservoir; and

WHEREAS, current scientific studies indicate that flow augmentation with water from the Upper Snake River Basin provides no meaningful benefit to salmon and steelhead in the lower Snake and Columbia Rivers; and

WHEREAS, taking or acquiring additional water from the Upper Snake River Basin for additional flow augmentation purposes would be contrary to existing state and federal law and devastate Idaho's economic and social base.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association opposes any action seeking to acquire or require more water from Idaho for listed salmon and steelhead.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association oppose legal challenges to the current 2008 biological opinion, including any future requests for injunctive relief.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association opposes USBR's water right transfer applications seeking to permanently change the nature of use of certain storage water to flow augmentation.

BE IT FURTHER RESOLVED, That the Idaho Water Uses Association supports the current state laws authorizing the rental of water in Idaho for limited flow augmentation purposes, pursuant to the terms, conditions and limitations of the Snake River Water Rights Agreement of 2004.

### **2018-15: Federal Columbia River Power System**

WHEREAS, In May 2016, a federal judge struck down the 2014 biological opinion for the Federal Columbia River Power System ("FCRPS") and ordered that the federal action agencies study the possible removal of one or more dams on the lower Snake and Columbia Rivers; and

WHEREAS, The federal judge has ordered that the existing biological opinion remain in place until 2018 and that the National Environmental Review Process for the FCRPS be completed in 2021; and

WHEREAS, In January 2018, the federal judge ordered that spill be increased at the lower Snake and Columbia River dams to the maximum level on a 24/7 basis; and

WHEREAS, The court-ordered spill operations are experimental and may harm salmon by causing gas bubble disease in juvenile salmon and prevent returning adult salmon from ascending fish ladders to reach their spawning grounds; and

WHEREAS, Complying with the spill order is estimated to cost \$40 million a year, resulting in increased rates to regional power customers, including those in Idaho; and

WHEREAS, The Columbia-Snake system is the top wheat export gateway in the U.S., with nearly 10% of all U.S. wheat exports, and half of Idaho's wheat exports, moved through the lower Snake River dams by barge; and

WHEREAS, It would take 43,610 rail cars or 174,440 semi-trucks to move the cargo that moves by barge on the lower Snake River; and

WHEREAS, The lower Snake River dams provide enough clean energy to power 1.87 million homes; and

WHEREAS, Removing the lower Snake River dams would have a significant negative impact on our economy and environment by eliminating more than 1,000 megawatts of carbon-free energy, increasing greenhouse gasses by 4.4 million tons per year and severely reducing navigation capacity, including the Port of Lewiston; and

WHEREAS, The cost of removing the lower Snake River dams is estimated between \$274 million and \$372 million annually; and

WHEREAS, Juvenile fish survival rates past each of the lower Snake and Columbia River dams are between 95% and 98%; and

WHEREAS, Dam improvements have resulted in improved fish returns and a 25-year sustained increase in salmon populations.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association is opposed to removal of any of the lower Snake and Columbia River dams and is also opposed to the court-ordered spill increases at the dams.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association supports the existing 2014 FCRPS biological opinion remaining in place until a subsequent biological opinion is adopted and in effect.