

**ASSOCIATION OF WESTERN STATE ENGINEERS**

**2009 POSITION STATEMENT**

**WATER TRANSFERS**  
**and**  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**DISCHARGE PERMITS**

**WHEREAS**, certain courts have ruled that the movement of water containing pollutants from one distinct body of navigable water to another can constitute a point source discharge subject to National pollutant Discharge Elimination System (NPDES) permitting under the Clean Water Act; and

**WHEREAS**, there are numerous interstate, interbasin, and intrabasin water transfers westwide that are essential to the social, economic, and environmental well-being of the region; and

**WHEREAS**, requiring NPDES permits for water right holders to transfer water to a location of need, in the exercise of their water rights, though no pollutant is added to the water and the transfer is not for waste disposal purposes, would inappropriately encumber necessary water transfers and the enjoyment of private property rights; and

**WHEREAS**, on June 7, 2006, the U.S. Environmental Protection Agency published in the Federal Register (Vol. 71, No 109) a proposed amendment to its Clean Water Act regulations (40 CFR Part 122) to expressly exclude water transfers from regulation under the NPDES permitting program and to define water transfers as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use; and

**WHEREAS**, the federal government has long recognized the right to use water as determined under the laws of the various states; and

**WHEREAS**, Congress did not intent to regulate the mere movement of water from one basin or sub-basin to another in the legitimate exercising of water rights as point source discharges of pollutants.

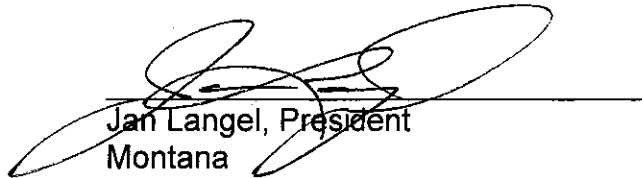
**NOW, THEREFORE, BE IT RESOLVED** that the Association of Western State Engineers supports EPA's regulations as published in the June 7, 2006 Federal Register. That the interbasin transfer of water is not subject to NPDES requirements pursuant to Clean Water Act.

**BE IT FURTHER RESOLVED** that the Association of Western State Engineers declares the transport of water through ditches, canals, tunnels, pipelines and other constructed water conveyances to supply municipal, agricultural, industrial and other beneficial uses, as opposed to waste disposal purposes, in compliance with state law, should not trigger NPDES permit requirements, simply because the transported water contains different chemical concentrations and physical constituents.

**BE IT FURTHER RESOLVED** that each Western state shall retain its discretion to use any available authorities to place appropriate conditions on transfers of water for water supply.

Adopted this 7<sup>th</sup> day of October, 2009.

Association of Western State Engineers



Jan Langel, President  
Montana