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NEWS & ANALYSIS

The Interior Department's *Water 2025*: Blueprint for Balance, or Just Better Business as Usual?

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The U.S. Bureau of Reclamation (USBR or the Bureau) observed its centennial in 2002, and celebrated 100 years of building dams and supplying water for irrigation and other purposes in the western United States.¹ In 2003, the U.S. Department of the Interior (the Interior) and the Bureau shifted their focus to the future of the West and its water supply needs, producing a document called *Water 2025: Preventing Crises and Conflict in the West*.²

Secretary of the Interior Gale Norton and the Bureau are making a fairly big deal of *Water 2025*. Secretary Norton personally announced it at a June 6, 2003, conference in Denver, and the Interior (primarily through the USBR) hosted a total of eight public meetings in cities throughout the West.³ For more than two months after it was rolled out, *Water 2025* remained the top story on the USBR website, and still appeared prominently on the main Interior home page.⁴ The Interior has asked for comments on the document,⁵ but has given no indication that the existing version of *Water 2025* is only a draft, or that it will produce a revised version after receiving and considering comments.

I. What *Water 2025* Is, and Isn't

Water 2025 is not a lengthy document. It is 27 pages long, counting the cover, and is printed in a large font with plenty of color photos, graphics, and white space. It reads very much like a printed PowerPoint® presentation, not a typical government paper.

At the outset, the document states its two basic purposes:

First, it provides a basis for a public discussion of the realities that face the West so that decisions can be made at the appropriate level in advance of water supply crises.

Second, *Water 2025* sets forth a framework to identify the problems, solutions, and a plan of action to focus the conversation as the Department of the Interior works with states, tribes, local government, and the private sector to meet water supply challenges.⁶

In other words, *Water 2025* is primarily a concept paper intended to stimulate and focus discussions on the future water supply challenges facing the West.

Water 2025 also states that it “does not pretend to be a complete solution to the complex water needs of the West. Principles of federalism and fiscal realities make it clear that these decisions cannot and should not be driven from the federal level.”⁷ The Interior does not promise to produce solutions to the West's water supply problems, or to provide funding to implement solutions—only “to work with states, tribes, local governments and the public to address the realities of water supply challenges in the West.”⁸ *Water 2025*, then, is clearly not a new federal program.

In fact, *Water 2025* may be defined largely by what it is not. It is not law, and does not propose or recommend any changes in law (although it does identify some areas where existing laws and procedures may obstruct solutions to water supply problems).⁹ And to the extent that *Water 2025* states federal policy, little if any of it is really new.

Water 2025 is not national in scope. It focuses on the West, specifically the 17 states in which the USBR operates.¹⁰ It does not address Alaska, Hawaii, or the states east of or along the Mississippi River.

Finally, *Water 2025* is not comprehensive in addressing the West's major water issues, focusing narrowly on water quantity—more specifically, on water supply. It makes no mention of such important water quantity issues as navigation and flood damage reduction. It ignores water pollution, and mentions water quality only in the context of naturally occurring salinity problems that pose serious water supply

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1. The USBR's very short autobiography, *Brief History of the Bureau of Reclamation*, is available at <http://www.usbr.gov/history/briefhis.pdf> (last visited Aug. 18, 2003). For a more critical view of the Bureau's history through the early 1980s, see MARC REISNER, *CADILLAC DESERT* (1986).
2. *Water 2025* is available at <http://www.doi.gov/Water2025/pdf> (last visited Aug. 18, 2003). Some printed versions carry a date of May 5, 2003, but the version at <http://www.doi.gov/water2025/water2025-report/page1.html> gives a date of May 3, 2003.
3. See <http://www.doi.gov/water2025/conference/>. The eight meetings were held in Albuquerque, Austin, Billings, Boise, Las Vegas, Phoenix, Sacramento, and Salt Lake City. See <http://www.doi.gov/water2025/conference/regional.html> (last visited Aug. 18, 2003).
4. See <http://www.usbr.gov> and <http://www.doi.gov>. On the other hand, there was no mention of *Water 2025* on the home page of other water-related agencies within the Interior, such as the U.S. Fish and Wildlife Service (FWS), or even on the “water” section of the U.S. Geological Survey (USGS) website, see <http://water.usgs.gov/> (all last visited Aug. 18, 2003).
5. Comments can be submitted online at <http://www.usbr.gov/water2025/feedback.cfm>, or by mail to: U.S. Department of the Interior, Bureau of Reclamation, Water 2025, 1849 C St. NW, Washington DC 20240. As of August 8, 2003, no deadline for submission of comments had been set.

6. *Water 2025*, *supra* note 2, at 3. Not all of the printed versions of *Water 2025* use the same pagination. Some versions have pages numbered 1 through 26 following the cover page, while others are numbered 2 through 27 following the cover. The online version in pdf format, *supra* note 2, takes the latter approach, so the first page after the cover is 2. Page citations to *Water 2025* in this Article follow those in the pdf version.

7. *Id.* at 4.

8. *Id.*

9. *Id.* at 20, 24.

10. The map of “Potential Water Supply Crises by 2025,” discussed *infra*, shows the six Plains states from North Dakota to Texas, the eight states of the Intermountain West, and the three West Coast states. *Id.* at 9.

challenges.¹¹ It notes the Interior's joint efforts with the U.S. Department of Agriculture (USDA), but says nothing of other federal agencies, such as the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency, that play key roles in western water issues. In fact, even though many parts of the Interior—most notably the U.S. Fish and Wildlife Service (FWS) and the Bureau of Indian Affairs—have key interests in water, *Water 2025* mentions only the USBR and the U.S. Geological Survey (USGS), and the cover page shows only two official logos: the Interior's and the USBR's.

In short, *Water 2025* is essentially a discussion document that identifies key water supply issues facing the West and suggests a framework for developing solutions to them.

II. What *Water 2025* Says

The fundamental points of *Water 2025* are “Six principles to guide us as we address systemic water problems; Five realities that drive water crises; and Four key tools to help us proactively manage our scarce water.”¹² The document also features a map of the 17 western states entitled “Potential Water Supply Crises by 2025.”

A. Six Principles for Addressing Water Supply Problems

Water 2025 states these principles at the outset, even before the five “realities” that otherwise set the stage for the document's discussion of water supply problems. The six principles of *Water 2025* are¹³:

(1) Solutions to complex water supply issues must recognize and respect state and federal water rights, contracts, and interstate compacts or decrees of the U.S. Supreme Court that allocate the right to use water.

(2) Existing water supply infrastructure must be maintained and modernized so that it will continue to provide water and power.

(3) Enhanced water conservation, use efficiency, and resource monitoring will allow existing water supplies to be used more effectively.

(4) Collaborative approaches and market-based transfers will minimize conflicts between demands for water for people, for cities, for farms, and for the environment.

(5) Research to improve water treatment technology, such as desalination, can help increase water supplies in critical areas.

(6) Existing water supply infrastructure can provide additional benefits for existing and emerging needs for water by eliminating institutional barriers to storage and delivery of water to other uses while protecting existing uses and stakeholders.

Water 2025 offers these principles with no elaboration, except that it adds and emphasizes the following statement in support of the first principle: “Since 1866, federal water law and policy has deferred to the states in the allocation and administration of water within their boundaries. This policy will be honored and enhanced by *Water 2025*.”¹⁴ The Interior obviously wants to state as clearly as possible that it will not threaten existing water uses based on state-law water rights, interstate compacts, and interstate allocation decrees.

B. Five Realities That Drive Water Crises

The document goes on to identify and explain five “realities” that complicate water supply in the West. It summarizes them as follows: “Explosive population growth; Water shortages exist; Water shortages result in conflict; Aging water facilities limit options; Crisis management is not effective.”¹⁵

Water 2025 stresses the first reality, “Explosive Population Growth in Arid Areas,” more than the others. It provides a U.S. Census Bureau map illustrating that the five fastest-growing U.S. states from 1990 to 2000 were in the West: Arizona, Colorado, Idaho, Nevada, and Utah led the nation in percentage terms, while New Mexico, Oregon, and Washington were also among the dozen fastest-growing states.¹⁶ A second map, showing growth in absolute terms, shows population booms in several of the West's “urban archipelagoes” such as the Colorado Front Range, Utah's Wasatch Front, Washington's Puget Sound, the Boise, Las Vegas, and Phoenix areas, and many parts of California and Texas.¹⁷ A third map illustrates the natural aridity of most of the West.¹⁸

The second reality, “Existing Water Supplies Are Inadequate,” states that the West faces real challenges in stretching its limited water supplies to meet the full range of demands. It notes that the West's recent droughts have stressed the region even further, but adds that “the potential for conflict over water supplies is no longer defined by drought events.”¹⁹

“Over-Allocated Water Supplies Can Cause Crisis and Conflict” is the third reality. The document states: “Recent crises in the Klamath River and Middle Rio Grande Basins—where farmers, cities, Native Americans, fish and wildlife all were impacted by the water shortages—vividly demonstrate the consequences of failing to address competing demands of people and the environment for a finite water supply.”²⁰ No other examples are given, and the document never explains what it means by “crisis.”

The fourth reality is “Aging Water Facilities Limit Management Options.” The document notes that the federal government built many important water supply facilities in the West, and that these facilities—“the visions of past water use pioneers—created vast areas of irrigated agriculture, harnessed the power of falling water to produce energy, and

11. *Water 2025* mentions source-water quality problems and the potential for new desalination techniques to address them in the section on “Improved Technology.” *Id.* at 22.

12. *Id.* at 3. It is not entirely clear what *Water 2025* means by “us,” “we” and “our.” The executive summary clearly states that the six principles are to guide *the Interior* in addressing water problems, but does not indicate who should use the four tools in managing water. See <http://www.doi.gov/water2025/Water2025-Exec.htm> (last visited Aug. 18, 2003).

13. *Water 2025*, *supra* note 2, at 3.

14. *Id.*

15. *Id.* at 4.

16. *Id.* at 5.

17. *Id.* at 6.

18. *Id.* at 7.

19. *Id.* at 8.

20. *Id.* at 10.

allowed cities to flourish.”²¹ Most of these facilities are now 50-60 years old or older, however, and struggling to meet today’s needs—especially because some do not operate very efficiently.

Water 2025’s final reality, “Crisis Management Is Not Effective,” stresses the importance of identifying and implementing measures to head off water supply conflicts before they develop. It urges “local and regional communities” to tackle these problems and make key decisions before drought or other problems trigger a crisis. The document also states that

in reality, the options for addressing water supply crises are well known and understood. In the long run, shortages in water quantity can be met only by increasing efficiency of existing water uses, transfers of water between uses, reducing or eliminating existing water uses, the development of alternative sources of water such as desalination, or by storing additional water in wet years for use in dry years.²²

C. Four Key Tools to Prevent Water Crises

Water 2025 then offers a set of four tools for resolving water issues (although it actually describes more than four), summarized as follows: “(1) Conservation, Efficiency, and Markets; (2) Collaboration; (3) Improved Technology; and (4) Remove Institutional Barriers and Increase Interagency Coordination.”²³ Most of the document is devoted to a presentation of these tools.

In discussing the first tool, “Conservation, Efficiency, and Markets,” *Water 2025* highlights three distinctly different ideas. First, the document emphasizes the potential savings of water and money from improving the efficiency of irrigation water deliveries through techniques such as canal lining.²⁴ Second, *Water 2025* stresses water banks as a means of making water available for new demands with a minimum of dislocation to the agricultural community.²⁵ Water banks provide a mechanism for short-term transfers of water from existing uses to new ones; since irrigation accounts for about 80% of the West’s water use,²⁶ nearly all transactions involve agricultural water moving to new uses, typically municipal water supply.²⁷ There are not a large number of water banks in the West, but the document specifically identifies a few: The Colorado-Big Thompson

Project in northern Colorado (home of the nation’s most active water market)²⁸; the Environmental Water Account in California; and three water banks in Idaho.²⁹ Third, the document identifies various programs for improved water data collection and coordination in the West, primarily through the USGS.³⁰

Water 2025’s second tool is “Collaboration.” Here, the Interior essentially says that water problems are best addressed through collaborative processes that are “based on recognition of the rights and interests of the stakeholders.”³¹ The document then reiterates the tradition of federal deference to state water law, states that “federal needs for water must respect prior rights to water created under state law,”³² and declares that the Interior is committed to working with all the interested parties in seeking ways to speed up water right adjudications.³³ Where *Water 2025* really pushes consensus, however, is in meeting the requirements of the Endangered Species Act (ESA). The document states that success in addressing water demands under the ESA “almost always requires a collaborative effort between stakeholders,” and cites the Upper Colorado Fish Recovery Program and the “CalFed” process in California’s Central Valley and Bay-Delta region as positive examples. According to *Water 2025*, “the twin goals of recovery of endangered species and meeting the water needs of people who live in these areas cannot be attained when the issues and resources are locked into a cycle of short-term litigation and decision-making.”³⁴

In discussing the third tool, “Improved Technology,” *Water 2025* emphasizes the development of new desalination technology. The document states that reducing the costs of desalination could make new water supplies available to Indian Reservations and other rural communities where existing aquifers are too saline for human consumption.³⁵ It gives no other examples of promising new technology.

The last tool in the list is “Institutional Barriers and Interagency Cooperation,” which includes two distinct parts. Under the subheading “Remove Institutional Barriers to Improve Water Management,” the document offers a vague paragraph about how some federal water facilities sometimes have excess capacity that potentially could be used to meet additional needs, but can’t be so used now because of legal or policy barriers. “In some cases, this additional capacity can be made available with appropriate changes in Interior policy. In other cases, legislative action could be considered.”³⁶ The document then mentions ongoing efforts in Colorado and California to allow use of federal water storage and pumping capacity for new purposes. Under a second subheading, “Coordinate Among Federal Agencies,”

21. *Id.* at 11. The document does not mention that these facilities and their associated water uses have also caused considerable environmental damage. See, e.g., Michael R. Moore et al., *Water Allocation in the American West: Endangered Fish Versus Irrigated Agriculture*, 36 NAT. RESOURCES J. 319 (1996) (noting that western counties with the greatest amount of USBR-irrigated acreage also have the highest number of endangered fish species).

22. *Water 2025*, *supra* note 2, at 12.

23. *Id.* at 13.

24. “Most irrigation water delivery canals in the West are currently unlined. Water savings and corresponding increases in available water supplies from installation of canal lining technologies could be significant as a whole.” *Id.* at 15.

25. *Id.* at 16-17.

26. See WAYNE B. SOLLEY ET AL., USGS, CIRCULAR NO. 1200, ESTIMATED USE OF WATER IN THE UNITED STATES IN 1995, at 6, 10-11 (1998).

27. According to a publication that tracks water transactions in the West, there were a total of 200 transactions in 2002, the majority of which were in Colorado, and 167 of the 200 transfers were for municipal purposes. *Annual Transaction Review*, WATER STRATEGIST, Feb. 2003, at 10, 16.

28. *Id.*

29. *Water 2025*, *supra* note 2, at 16-17.

30. *Id.* at 18.

31. *Id.* at 19.

32. *Id.*

33. *Id.* at 20. General stream adjudications are huge, complex cases that seek to determine existing water rights in a particular stream basin. These adjudications may involve thousands of parties and take several decades to complete. Massive general adjudications have been going on in several western states since the 1970s, with Idaho’s beginning in the 1980s. See A. DAN TARLOCK ET AL., WATER RESOURCE MANAGEMENT 304 (5th ed. 2002).

34. *Water 2025*, *supra* note 2, at 20.

35. *Id.* at 22.

36. *Id.* at 24.

Water 2025 describes the Interior's efforts to coordinate with other federal agencies on water matters, primarily drought response, but the only non-Interior agency specifically mentioned is the USDA.³⁷

D. Map of Potential Water Supply Crisis Areas

The final key element of *Water 2025* is a map of the 17 western states from the Great Plains to the West Coast. This map is headed, "Potential Water Supply Crises by 2025 (areas where existing supplies are not adequate to meet water demands for people, for farms and for the environment)."³⁸ The map legend then identifies four categories of "Water Supply Issue Areas," each with its own color: three categories based on "Conflict Potential": Medium (yellow); Substantial (orange); and Highly Likely (red), along with a fourth category, "Unmet Rural Water Needs" (a sort of salmon beige). The Interior selected areas within these four categories based on "technical input and professional judgment."³⁹

The areas shaded red for "Highly Likely" conflict potential are the California Central Valley and Bay-Delta area; the Carson-Truckee basin around Reno; the Lower Colorado River below Hoover Dam (including Las Vegas); the area around Prescott and Flagstaff, Arizona; the Little Colorado and Gila basins, mostly in eastern Arizona; the Wasatch Front around Salt Lake City; the Colorado Front Range from Pueblo to Fort Collins; the Middle Rio Grande River below Santa Fe; the Lower Rio Grande River below Amistad Reservoir; and most of the Gulf Coast of Texas (including Houston).

The "Conflict Potential—Substantial" areas are the Columbia and Snake River mainstems in the Pacific Northwest; the Klamath Basin of Oregon and California; the area of northern California including Sacramento, San Francisco, and an area north and east of San Francisco Bay; coastal southern California including Los Angeles and San Diego; the Phoenix-Tucson area; and the Texas cities of El Paso, San Angelo, and San Antonio.

The map contains 21 separate yellow areas indicating "moderate" conflict potential. Most of these areas surround growing cities, ranging from Dallas and Oklahoma City to Portland and Seattle. Notable river basins in this category include California's Trinity, Montana's Milk, New Mexico's Pecos, Oregon's Rogue, and the Platte in Colorado, Nebraska, and Wyoming above the Big Bend reach.

Finally, the map identifies a few areas with "Unmet Rural Water Needs," primarily in Arizona, Kansas, Nebraska, and New Mexico. There is no such category for other types of water use, and no explanation of why the map does not also highlight areas where water supplies are insufficient for such purposes as healthy aquatic ecosystems, water-based recreation, or tribal economic development.

In summary, *Water 2025* says that the arid West—especially those areas shown on the map—faces significant wa-

ter supply challenges that will only grow in the coming years. Various tools exist to meet these challenges, and water stakeholders and decisionmakers should employ these tools now with the goal of averting water crises later. In addressing water supply issues, however, existing water rights, contracts, compacts, and decrees governing water allocation must be respected.

III. What *Water 2025* Doesn't Say—and What the Interior Means by That

Water 2025 is not the type of document to provide many details. It is primarily a discussion paper, after all, not a scientific report or administrative rule. Nonetheless, what *Water 2025* doesn't say is as noteworthy in some respects as what it does say. Some of *Water 2025*'s key omissions—avoiding any mention of water quality, for example—apparently reflect an effort to keep the document narrowly focused on water supply. Another subject that clearly has enormous water supply implications for the West—climate change⁴⁰—presumably was skipped because it was a political can of worms that the Interior saw no need to open in this context. Other subjects, however, are so obviously important to water supply in the West, and so closely tied to subjects the document does cover, that it is hard to believe that *Water 2025* says little or nothing about them. This section discusses three such subjects.

A. New Water Storage Projects

Except for a single passing mention, neither the document nor any of the Interior's supporting materials raise the possibility of developing new water storage projects.⁴¹ This omission is striking not so much because of USBR's own remarkable record of dam building, but because constructing new storage projects is still a preferred approach, or even the first option, for the West's traditional water supply interests. In a recent survey, state water resource officials said that the thing they'd like most from the U.S. government is more federal money to plan and construct new water storage and distribution projects.⁴² Irrigators, too, have responded to *Water 2025* by arguing for federal support of new storage.⁴³

40. See KENNETH D. FREDERICK & PETER H. GLEICK, *WATER AND GLOBAL CLIMATE CHANGE: POTENTIAL IMPACTS ON U.S. WATER RESOURCES* (1999).

41. Storage is mentioned only as one of several possible options for addressing water demands. *Water 2025*, *supra* note 2, at 12. Storage is not mentioned at all in the supporting materials for *Water 2025*, which include the "Frequently Asked Questions" document, *supra* note 39, Press Release, Secretary Gail Norton, U.S. DOI, *Rollout of Water 2025* (June 6, 2003), available at <http://www.doi.gov/news/030606b.htm>, and John W. Keys III, Commissioner, U.S. Bureau of Reclamation, Closing Remarks at *Water 2025 Kickoff Conference*, Denver, Colo. (June 6, 2003), available at <http://www.doi.gov/water2025/remarks-keys.doc> (last visited Aug. 8, 2003).

42. U.S. GENERAL ACCOUNTING OFFICE (GAO), *FRESHWATER SUPPLY—STATES' VIEWS OF HOW FEDERAL AGENCIES COULD HELP THEM MEET THE CHALLENGES OF EXPECTED SHORTAGES 9* (2003) (GAO-03-514).

43. For example, the Family Farm Alliance's testimony on *Water 2025* says that new storage is "not only possible, but holds the key to resolving many of the West's most difficult water conflicts." Family Farm Alliance Executive Director Craig Smith, Testimony at the *Water 2025* conference in Denver, June 6, 2003, available at <http://www.familyfarmalliance.org/docs/Beyond%20Crisis%20-%20Denver%20Testimony.pdf>.

37. *Id.* at 25.

38. *Id.* at 9. This map is available on the Internet at <http://www.doi.gov/water2025/supply.html> (last visited Aug. 11, 2003).

39. This statement appears on the printed version of "Frequently Asked Questions," dated May 2003, distributed with *Water 2025* (on file with author). The web version, available at <http://www.doi.gov/water2025/qa.html>, does not include it, although the two are identical in most respects.

Interior officials, while not rejecting new storage as an option, have clearly said that it should not be the first or only option. As Secretary Norton stated: “Too often, when you talk about future water needs, the only thing people talk about is storage. The idea of building storage has to emerge out of a planning process. I think we ought to explore all the possibilities to see what makes sense for a community.”⁴⁴ The Interior is not trying to discourage new storage projects, but to encourage water interests to consider other possibilities. “Storage as not off the table,” said USBR Commissioner John Keys III. “We are saying we have to look at other measures first.”⁴⁵

B. Environmental Water Needs

Water 2025 clearly recognizes the importance of ensuring adequate water supplies for a healthy environment in today’s West. The document repeatedly mentions environmental water needs, including the need to provide water for species protected by the ESA. The ESA-driven water disputes in the Klamath and Rio Grande basins are specifically mentioned—in fact, they are the only two mentioned—as the sort of “crises” that *Water 2025* seeks to avoid.⁴⁶ At the end, the document states flatly that *Water 2025* will “provide added environmental benefits to many watersheds, rivers and streams,” and “[m]inimize water crises in critical watersheds by improving the environment. . . .”⁴⁷ How *Water 2025* will actually provide water to meet environmental needs, however, is not at all clear.

Water 2025 offers few assurances as to how the Interior will comply with the ESA and other federal environmental laws. Right up front, the document clearly promises deference to state water laws, respect for water supply contracts and state water rights, and recognition of interstate compacts and decrees,⁴⁸ but no similar treatment for the federal environmental laws . . . despite the fact that both the U.S. Court of Appeals for the Ninth Circuit and the U.S. Court of Appeals for the Tenth Circuit have held that the ESA may require USBR to reduce deliveries under its water supply contracts for irrigation.⁴⁹ Thus, *Water 2025* provides much stronger guarantees to traditional water users than it does to endangered species, despite the ESA.

Water 2025’s message on ESA compliance is simple: collaboration is the way to go. After briefly mentioning this point early on,⁵⁰ the document addresses the ESA at some length under the heading of “collaboration,” saying that cooperative approaches are necessary for meeting endangered species’ water needs for two reasons:

First, the twin goals of recovery of endangered species and meeting the water needs of people who live in these areas cannot be attained when the issues and resources are locked into a cycle of short term litigation and decision-making. Long term Biological Opinions issued under the [ESA] are essential to the long term planning and predictability that both people and endangered species need. Second, public support for the state, private, and federal commitments that is [sic] required to meet these twin goals is essential. Stakeholders typically will not commit public or private resources to water supply development and endangered species recovery efforts without an assurance that the benefit of their investment of resources will not be swept away by short term decision making.⁵¹

Water 2025 hails the Upper Colorado River Fish Recovery Program as a successful example of ESA compliance through collaboration,⁵² even though this program has apparently been much more effective in allowing new water development than in providing water for the endangered fishes.⁵³

Whether any of the *Water 2025* “tools” will succeed in actually providing water for environmental needs is highly uncertain. Water conservation projects (such as irrigation canal lining) do not generally make water available for new uses.⁵⁴ Water banks do not exist in many places, and they will probably require federal funding to support water acquisitions for the environment—a concept that many western water users and states staunchly oppose.⁵⁵ Changing the operation of federal water projects certainly could provide environmental benefits, but as *Water 2025* recognizes, the Interior’s policies and existing laws often may prevent operational changes⁵⁶ and this is likely to remain true unless existing project beneficiaries agree to support changes. Finally, experience shows that “collaborative” solutions to western water problems generally work best in response to serious ESA litigation or agency action; the ESA has proved to be the best tool for ensuring that all interested parties are strongly motivated to reach a lasting solution.⁵⁷

51. *Id.* at 20.

52. *Id.* Secretary Norton said flatly: “We should have more Upper Colorado Endangered Fish Recovery Programs and fewer Klamaths.” Press Release, *supra* note 41.

53. See, e.g., Hannah Gosnell, *Section 7 of the Endangered Species Act and the Art of Compromise: The Evolution of a Reasonable and Prudent Alternative for the Animas-La Plata Project*, 41 NAT. RESOURCES J. 561, 573-74 (2001); Mary Christina Wood, *Reclaiming the Natural Rivers: The Endangered Species Act as Applied to Endangered River Ecosystems*, 40 ARIZ. L. REV. 197, 248-49 (1998). For a more general description of the Upper Colorado Endangered Fish Recovery Program, see *id.* at 229-30.

54. See USBR, FINAL ENVIRONMENTAL IMPACT STATEMENT, ACREAGE LIMITATION, AND WATER CONSERVATION RULES AND REGULATIONS ch. 2, at 6, ch. 4, at 114 (1996).

55. The proposed “Reid Amendment” to the 2000 Farm Bill, which would have provided federal money for willing-seller acquisitions of water rights for environmental purposes, in accordance with state water laws, sparked strong opposition from the West’s water establishment. See David E. Filippi, *The Impact of the Endangered Species Act on Water Rights and Water Use*, 2002 PROC. ROCKY MTN. MIN. L. INST. 22-1, 22-17 to 22-18 (2002).

56. *Water 2025*, *supra* note 2, at 24.

57. The California Bay-Delta Agreement, which led to the creation of the much-acclaimed “CalFed” process, is perhaps the most notable example of a collaborative process generated by strong application of the environmental laws. In the words of one of the chief architects of the Bay-Delta Accord:

44. Rocky Barker, *Boise Conference Looks Ahead to Secure Water for the West*, IDAHO STATESMAN, July 16, 2003, at 1, 7 Main.

45. Rocky Barker, *Officials Push for Water Regulation*, IDAHO STATESMAN, July 18, 2003, at 4 Local.

46. *Water 2025*, *supra* note 2, at 10.

47. *Id.* at 26.

48. *Id.* at 3.

49. See O’Neill v. United States, 50 F.3d 677, 25 ELR 20873 (9th Cir. 1995); Klamath Water Users Ass’n v. Patterson, 204 F.3d 1206 (9th Cir. 1999); Rio Grande Silvery Minnow v. Keys, Nos. 02-2254 et al., 2003 WL 21357246 (10th Cir. June 12, 2003).

50. “Implementation and enforcement of the federal [ESA] is far more effective if a water supply crisis is avoided through collaborative efforts than through lengthy litigation or managing water supply issues on an emergency basis.” *Water 2025*, *supra* note 2, at 4.

C. Federal Action Items

Another notable aspect of *Water 2025* is the paucity of clear commitments, or even proposals, for federal actions—especially new ones. This choice is not entirely surprising. For example, the Interior could not commit to requesting congressional funding in future years without running afoul of the Bush Administration's normal budgeting process, so the document says only that USBR has requested an (extremely modest) \$11 million appropriation for activities related to *Water 2025* in fiscal year (FY) 2004.⁵⁸ Moreover, the scarcity of federal "action items" is consistent with a basic philosophy of the Administration as reflected in *Water 2025*: water management decisions are best made by states, local governments, and stakeholders, not the federal government.⁵⁹

Still, it is somewhat surprising that such a significant federal water policy effort would say so little about what the federal government will actually attempt to do. A review of the document finds a dozen statements that the Interior (or the USBR or the USGS) will do something or is committed to something. One can question the practical importance of these statements, which fall into four basic categories:

(1) Four involve improving the collection and dissemination of information on water supply: to "enhance groundwater monitoring and stream flow-measurement in critical areas of the West"; to continue constructing and managing sites that measure and record snowpack data in real time⁶⁰; to support the National Drought Monitoring Network; and to create a monthly Water Resources Assessment that will be available online.⁶¹

(2) Three involve developing approaches to resolve fairly specific problems: to "work with partners to retrofit and modernize existing [irrigation] facilities to accomplish improved water management through the use of new technologies"⁶²; to work "with states, tribes, and interested stakeholders to find ways to accelerate [water right adjudications] in order to protect existing federal and

non-federal rights"⁶³; and to "seek to facilitate the implementation of desalination and advanced water treatment through improved interagency coordination of research and focused investments to areas most needing planning support."⁶⁴

(3) Three are vague general assurances: to "work with states, tribes, local governments and the public to address the realities of water supply challenges in the West"⁶⁵; to "use all available tools that have a demonstrated capacity to address potential water supply crises"⁶⁶; and to "partner with state and local governments, tribes, water users and conservation groups to improve river systems."⁶⁷

(4) Two involve coordinating with other federal agencies on drought preparedness and response: to "cooperate with other federal agencies to more effectively focus federal dollars on critical water short areas, coordinating to enhance water management preparedness"; and to create Drought Action Teams involving the Interior and the USDA.⁶⁸

As a practical matter, the most important promise in the document is probably the following: "Since 1866, federal water law and policy has deferred to states in the allocation and administration of water within their boundaries. *This policy will be honored and enhanced by Water 2025.*"⁶⁹ This commitment to let the states control water allocation in the West immediately follows and supports *Water 2025*'s "first principle" of respect for existing water laws, water rights, compacts, and decrees.

IV. Analyzing *Water 2025*

A. Implications of *Water 2025* for Western Water Interests

In calling for long-range planning, improvements in irrigation efficiency, and greater use of markets, *Water 2025* is certainly a step forward for common-sense water policy. These recommendations echo many of those made by past blue-ribbon water policy commissions, such as the 1990s' Western Water Policy Review Advisory Commission⁷⁰ and the 1970s' National Water Commission.⁷¹ Such common-sense recommendations for water policy have often failed, however, because they did not serve the purposes of key water interests in the West. These past failures raise a practical question: how well does *Water 2025* address the needs of important water interests in today's West?

The Bay-Delta experience also demonstrates that collaborative processes alone—regardless of how well managed they are—often will not guarantee that long-term, national values receive adequate protection. Water users frequently need external incentives to put water on the table for environmental protection—whether those incentives are federal mandates, federal dollars, or something else. Absent the mandates of the Clean Water Act and the ESA, there would be no Bay-Delta agreement and, therefore, no enhanced protection for the resources of that system.

Elizabeth Ann Rieke, *The Bay-Delta Accord—A Stride Toward Sustainability*, 67 U. COLO. L. REV. 341, 367 (1996). See also *Rio Grande Silvery Minnow v. Keys*, No. CV-99-1320, slip op. at 49 (D.N.M. Apr. 19, 2002) (noting that little was happening in the Middle Rio Grande Basin to protect the endangered silvery minnow until plaintiffs brought ESA litigation, which "got the ball rolling, prompting all parties to come up with far-reaching solutions to the problems that once seemed insurmountable").

58. *Water 2025*, *supra* note 2, at 4.

59. See *infra* notes 112-22 and accompanying text.

60. *Water 2025*, *supra* note 2, at 18.

61. *Id.* at 25.

62. *Id.* at 14.

63. *Id.* at 20.

64. *Id.* at 23.

65. *Id.* at 4.

66. *Id.* at 9.

67. *Id.* at 21.

68. *Id.* at 25. *Water 2025* says that these Drought Action Teams will allow each department to respond quickly to emerging water supply shortages, and to coordinate implementation of their existing programs.

69. *Id.* at 3 (emphasis added).

70. See WESTERN WATER POLICY REVIEW ADVISORY COMM'N, WATER IN THE WEST: CHALLENGE FOR THE NEXT CENTURY (1998).

71. See NATIONAL WATER COMM'N, WATER POLICIES FOR THE FUTURE (1973).

1. Traditional Interests—States, Irrigators, and Municipalities

The long-standing “powers that be” in western water issues are the states—with their broad authority to allocate and manage water—and agricultural and municipal interests, who are the region’s biggest water users.⁷² Given their strong legal positions under traditional western water law, these interests can be expected to benefit from *Water 2025*’s first principle of honoring existing water laws, water rights, compacts, and decrees.

The good news for the western states is that *Water 2025* without qualification promises deference to state water laws, giving the states maximum authority to make water allocation decisions. Moreover, the document repeatedly promises that the Interior will consult with states and will work closely with them in resolving water issues.⁷³ The bad news is that *Water 2025* says little about federal funding and nothing about new storage—and as noted above, money for new storage projects is at the top of the states’ federal wish list.⁷⁴ Many irrigators and municipalities would concur with the states’ view of these pros and cons. Thus, *Water 2025* only offers one-half of what the West has traditionally asked of the federal government: “Get Out, and Give Us More Money.”⁷⁵

As for urban interests, *Water 2025* clearly recognizes that western cities are growing fast and will need additional water supplies to meet new demands. While the document says nothing about new storage to meet these needs, it does offer a strong endorsement of water markets, which should provide municipalities with a flexible and cost-effective option for securing new water. And while it seems clear that municipalities will be the primary “buyers” for the foreseeable future,⁷⁶ it is not clear what role(s) the federal government might play in the establishment and operation of new water markets in the West.

As for irrigators, they tend to be wary of water markets, although few would disagree that the willing-seller approach is preferable to government regulation. As *Water 2025* notes,⁷⁷ water markets have sparked opposition in agriculture, where many people believe that water transactions will inevitably erode the irrigated acreage base to the detriment of agricultural communities and the industry as a

whole. On the other hand, water markets may provide an attractive option for many individual growers, particularly those who seek to forego irrigating on a temporary basis, to retire from farming debt-free without selling their land, or to take positive action for the health of their local river.

One final point is clear from *Water 2025* and its supporting materials: the Interior is eager to allay the fears of traditional western water interests (especially irrigators) by assuring them that its actions will not threaten existing water rights or established water law principles. The wording and placement of *Water 2025*’s first principle clearly illustrate this point.⁷⁸ The document also notes that although water banks and markets are “sometimes a source of concern to agricultural areas and the communities that support them[,] . . . Interior strongly supports the use of these mechanisms to allow water to be shifted between competing water uses because they are based on a recognition of the validity of existing rights.”⁷⁹ In addition, the *Water 2025* “Frequently Asked Questions” page addresses some of the biggest concerns of traditional water interests—“Will *Water 2025* be used to take water away from agriculture?” “Could water marketing threaten the water rights held by irrigators and others?” “Will *Water 2025* transfer control over water from states to the federal government?”—and provides reassuring answers to each of these questions.⁸⁰

2. Indian Tribes

The document repeatedly mentions tribes, but never addresses any of their unique circumstances, challenges, and issues. Instead, *Water 2025* generally lumps tribes in with other water stakeholders in the West, such as states, local governments, and the public.⁸¹

The document and supporting materials are silent on several important points relating to tribes. For example, it does not indicate how the Interior intends to carry out its federal trust responsibility to tribes, or even mention that such a trust responsibility exists.⁸² It says virtually nothing about meeting tribes’ on-reservation water needs,⁸³ or ensuring that tribes are actually receiving “wet” water in accordance

78. See *supra* notes 13-14 and accompanying text.

79. The document continues: “Water banks also avoid or reduce the conflict, crisis, and heartache that results when water uses are changed through regulatory or other means. More importantly, water banks can provide a mechanism for preserving irrigated agriculture and meeting other water supply needs.” *Water 2025, supra* note 2, at 16.

80. Frequently Asked Questions, *supra* note 39.

81. Examples in *Water 2025* include the Interior’s promise “to work with states, tribes, local governments and the public to address the realities of water supply challenges in the West,” *Water 2025, supra* note 2, at 4; a recognition that “farmers, cities, Native Americans, fish and wildlife all were impacted” by the recent water crises in the Klamath and Middle Rio Grande Basins, *id.* at 10; the Interior’s promise to “partner with state and local governments, tribes, water users and conservation groups to improve river systems,” *id.* at 21; and a mention that the Interior “interacts with many different stakeholders, including farmers, ranchers, cities, tribes, conservation groups and others,” *id.* at 25.

82. For a discussion of the federal trust responsibility to tribes, see Harold Shepherd, *Conflict Comes to Roost! The Bureau of Reclamation and the Federal Indian Trust Responsibility*, 31 ENVTL. L. 901, 905-10 (2001). The article goes on to explore USBR’s activities relating to tribes in some detail.

83. Under the “Improved Technology” heading, the document does note that advances in desalination technology could help make saline groundwater available for human use in some “rural communities and Indian reservations.” *Water 2025, supra* note 2, at 22.

72. Irrigation accounts for 80% of water withdrawals in California, 81% in the Lower Colorado Basin, 82% in the Pacific Northwest, 85% in the Great Basin, 90% in the Rio Grande Basin, and 95% in the Upper Colorado Basin. Public water supply is the second largest user in five of these areas, accounting for 15% of water withdrawals in both California and the Lower Colorado Basin, 6% in the Pacific Northwest, 10% in the Great Basin, and 7% in the Rio Grande Basin. In the Upper Colorado Basin, public water supply and thermoelectric power generation each account for 2% of withdrawals. SOLLEY ET AL., *supra* note 26, at 10.

73. *Water 2025, supra* note 2, at 3, 4, 9, 20, 21. These promises may not apply to the state of California, which is feuding bitterly with the Interior over federal water management decisions on the Klamath and Lower Colorado Rivers. See Stuart Leavenworth, *State Rips Norton on Water Conflicts*, SACRAMENTO BEE, July 10, 2003, at A3.

74. See *supra* note 42 and accompanying text.

75. See WALLACE STEGNER, *THE AMERICAN WEST AS LIVING SPACE* 9 (1987).

76. Even though water markets for environmental purposes are growing in acceptance, nearly six out of seven water transactions in 2002 were for municipal purposes. *Annual Transaction Review, supra* note 27.

77. *Water 2025, supra* note 2, at 16.

with their high-priority water rights.⁸⁴ Despite its general emphasis on water markets, it says nothing on the increasingly important subject of off-reservation marketing of tribal water rights.⁸⁵

Thus, it is difficult to say just what *Water 2025* is likely to mean for tribes in the West. Since many tribes enjoy senior water rights—at least on paper—a faithful application of *Water 2025*'s first principle would seem to benefit them,⁸⁶ but the document otherwise offers little encouragement that tribal water needs will be a high priority for the Interior.⁸⁷ In general, *Water 2025* seems to put tribes on the same plane with local governments, treating both simply as stakeholders who should have a seat at the table in efforts to resolve western water issues.

3. Nontraditional Interests—Environment and Recreation

For environmentalists, *Water 2025* offers some good and some bad news. The bad news, as discussed above,⁸⁸ is that the document implicitly gives the federal environmental laws lower priority than traditional water rights and water law principles. Moreover, it offers only general possibilities for providing water to restore healthy rivers and streams, with no assurances as to when or whether such needs will actually be met.

The good news is that *Water 2025* does not call for new storage as the primary option for meeting existing and future water demands,⁸⁹ instead emphasizing such “soft path” strategies as water conservation, market mechanisms, and improved operation of existing facilities. In addition, the document seems to recognize the importance of addressing environmental water demands,⁹⁰ and implies that conservation groups should be involved as stakeholders in resolving water issues in the West.⁹¹

While *Water 2025* devotes considerable attention to environmental issues, the Interior does not appear greatly concerned with addressing conservationists' concerns about it. The “Frequently Asked Questions” sheet, which does its

best to allay the fears of traditional water interests,⁹² contains only the briefest mention of environmental matters: “Q: Does *Water 2025* propose changes to federal or state environmental laws? A: No.”⁹³ Dismissing environmentalists' criticism of the Interior surrounding the release of *Water 2025*, Assistant Secretary of the Interior Bennett Raley said bluntly that “[t]here's nothing we can do to make them happy except disappear.”⁹⁴

Recreational water uses such as sportfishing and white-water boating are basically ignored.⁹⁵ The Interior mentions recreational water uses in passing on page 2 of the document, and says nothing more about them.⁹⁶ Nothing indicates that the Interior will work to address recreational water needs, or that recreationists are important stakeholders who should be involved in the West's water decisions. To the contrary, Secretary Norton's press release for *Water 2025* says that water crises sometimes pit “business against recreation”⁹⁷—failing to recognize, apparently, that water-based recreation is big business in many parts of the West, and that water shortages can cause severe economic harm to this industry.⁹⁸ In short, *Water 2025* leaves the impression that the Interior does not regard recreational water uses as being particularly important.

B. *Water 2025*'s Underlying Philosophy

Water 2025 and its supporting materials shed some light on the Interior's basic views regarding western water issues and the federal government's proper role in addressing them. The following paragraphs briefly discuss some of these fundamental philosophies underlying *Water 2025*.

1. Success Defined by Preventing Crisis and Conflict

The most obvious point appears in the full title of the document, *Water 2025: Preventing Crises and Conflict in the West*. The Interior has defined success in water management, not by meeting all the important water needs in an area, but by avoiding a crisis or conflict over water supply in

84. For a discussion of reasons behind the common failure to honor and satisfy tribal water rights, see Reed D. Benson, *Can't Get No Satisfaction: Securing Water for Federal and Tribal Lands in the West*, 30 ELR 11056 (Nov. 2000). The document's only statement on this subject is that “Interior is committed to working with states, tribes, and interested stakeholders to find ways to accelerate [water right adjudication] proceedings in order to protect existing federal and non-federal rights.” *Water 2025*, *supra* note 2, at 20.

85. See generally David H. Getches, *Management and Marketing of Indian Water: From Conflict to Pragmatism*, 58 U. COLO. L. REV. 515 (1988).

86. The first principle calls for recognition and respect for “state and federal water rights.” *Water 2025*, *supra* note 2, at 3. It may be significant that tribal water rights are not directly mentioned, but since tribal rights are created under the federal *Winters* doctrine of reserved water rights, this principle should cover tribal rights as well.

87. It is noteworthy that *Water 2025* never mentions the Interior's own Bureau of Indian Affairs, but gives two examples of cooperative efforts between the Interior and the USDA. *Water 2025*, *supra* note 2, at 18, 25.

88. See *supra* notes 48-57 and accompanying text.

89. See *supra* notes 41-45 and accompanying text.

90. See *supra* notes 46-47 and accompanying text.

91. For the most part, the document refers generically to involving “the public” (*Water 2025*, *supra* note 2, at 4, 9) or “the private sector” (*id.* at 3) or “interested stakeholders” (*id.* at 19, 20) in seeking solutions to water problems. At one point, however, it does state that the Interior will “[p]artner with state and local governments, tribes, water users and conservation groups to improve river systems.” *Id.* at 21.

92. See *supra* note 80 and accompanying text.

93. Frequently Asked Questions, *supra* note 39.

94. Dave Berns, *Western Water: Nevada Asks for More*, LAS VEGAS REV.-J., July 10, 2003, at A1.

95. The text says virtually nothing about recreation, but a picture of a sailboat on a lake is one of five photos that appear on every page of the document. The other four photos show a farmer in his cornfield, the hydropower works inside a dam, a leaping salmon, and a child filling her cup at a home water faucet.

96. The statement says only that “explosive population growth in western urban areas, the emerging need for water for environmental and recreational uses, and the national importance of the domestic production of food and fiber from western farms and ranches are driving major conflicts between these competing uses of water.” *Water 2025*, *supra* note 2, at 2. The document also contains a sidebar quote to the same effect from a Congressional Research Service report, noting “increasing demand for water for recreation, scenic value, and fish and wildlife habitat.” *Id.* at 8.

97. Secretary Norton's quote reads: “When water crises and conflict pit neighbor against neighbor, species against species, and business against recreation—when they threaten your way of life—we can not afford to stand on the sidelines.” Press Release, *supra* note 41.

98. Commercial rafting generated an estimated \$126 million in economic activity for Colorado in 2001. However, drought conditions caused a 39% drop in business in 2002, cutting rafting-related economic activity by about \$49 million. Jason Blevins, *As Waterways Dried Up in 2002, So Did Rafting*, DENVER POST, Feb. 11, 2003, at C-1.

that area. This emphasis on crisis prevention appears over and over in the document itself,⁹⁹ as well as in the supporting materials. For example, the idea of preventing crises appears twice in the *title* of Secretary Norton's press release announcing *Water 2025*.¹⁰⁰

Why is the Interior so fixated on crisis prevention? The answer is not entirely clear. The most straightforward statement in the document itself is the following: "Simply put, the West has developed to the point that the social, economic and environmental consequences of water supply crises are no longer a local or regional issue. These crises now affect economies and resources of national importance."¹⁰¹ Other than offering the Klamath and Middle Rio Grande as examples, the Interior never defines the term "crisis," or explains why a water "crisis" is so much worse than the garden-variety severe water shortages that have always plagued the West. The reader is left to wonder: if a river dries up leaving fish dead, crops withered, lawns brown, or tribal lands parched (or some combination of these effects), is the situation acceptable so long as there is no major conflict among uses? Surely the Interior would not say so, but with its overwhelming focus on preventing crisis and conflict, *Water 2025* could be interpreted that way.

There are any number of reasons why the Interior may have chosen to emphasize crisis prevention as the goal of *Water 2025*. Perhaps it believed that crisis prevention would be the most effective message for reaching the public: it seems reasonable and achievable (more so than a goal of meeting all the West's key water needs), it's uncontroversial (who would say in the abstract that crisis prevention is a bad thing?), and it's potentially appealing to the mainstream media (which tend to ignore water issues except in times of crisis). Perhaps the Interior was acting partly in its own self-interest, seeking to protect itself from the kind of intense legal and political flak that the USBR and the FWS have received over the Klamath and Rio Grande controversies. Or perhaps the Interior recognized that a "no-crisis" policy would effectively leave the West's water in hands of traditional powers, including agriculture—a key part of this Administration's political base.¹⁰²

99. *Water 2025*, *supra* note 2, at 3, 4, 6, 8, 9, 10, 12, 13, 14, 16, 17, 20, 21, 26. There is also the following cryptic statement on page 19: "Significant water supply crises must be addressed in advance of the crisis."

100. The main title reads: "Interior Secretary Norton Urges Locally-Driven, Cooperative Solutions to Avert Water Crises," and the subtitle reads: "'The Nation cannot afford repeated water crises in the West,' Secretary Norton tells *Water 2025* conference." Press release, *supra* note 41. This same idea appears in each of the first four paragraphs of the press release text, and in about one-half of the succeeding paragraphs.

101. *Water 2025*, *supra* note 2, at 12. Elsewhere, the document expresses the same idea in somewhat greater detail:

Recent crises in the Klamath River and Middle Rio Grande Basins—where farmers, cities, Native Americans, fish and wildlife all were impacted by the water shortages—vividly demonstrate the consequences of failing to address competing demands of people and the environment for a finite water supply. The Nation cannot afford repeated water crises. The social, economic, and environmental consequences of water supply crises are too severe.

Id. at 10.

102. See Tom Hamburger, *Water Saga Illuminates Rove's Methods*, WALL ST. J., July 30, 2003, at A4 (describing activities of top Bush Administration political operative Karl Rove to ensure that the Interior made water available to farmers in the Klamath Basin).

2. Urban Growth as Primary Source of Water Conflict

The document never quite says it, but *Water 2025* clearly assumes that population growth will be the major source of conflict and crisis over water in the West. As noted above, *Water 2025*'s first reality is "Explosive Population Growth in Arid Areas," as illustrated by graphics showing explosive population growth (especially in major urban areas) in most of the western states.¹⁰³ The document repeatedly mentions population growth as a major source of stress on the West's water supplies.¹⁰⁴

The strongest evidence of the Interior's view of urban water demands, however, is the map of "Potential Water Supply Crises by 2025."¹⁰⁵ With few exceptions, the "red" and "orange" areas denoting the greatest likelihood of conflict relate to rapidly growing metropolitan areas such as Albuquerque, Denver, Las Vegas, Phoenix, Salt Lake City, San Antonio, and southern California. All the West's major cities were designated at least "yellow," along with some smaller ones such as Bend, Pocatello, and Yakima. Even the Texas Gulf Coast, some of which receives greater than 40 inches of rain per year, is colored red. By contrast, few of the dozens of Indian reservations in the West are colored at all,¹⁰⁶ and most areas with unmet water needs for endangered species but no major urban growth (such as the Platte's Big Bend reach) are shaded only yellow.¹⁰⁷

While the water needs of growing cities will certainly be a major factor in the West's future, it is unclear why the Interior regards municipal demands as the most likely source of *conflict* over water in the West.¹⁰⁸ As noted in the document itself, western cities have been growing rapidly for many years but rarely has this growth caused the sort of "crises" that *Water 2025* seeks to avoid. Not only are municipal water demands widely regarded as legitimate, but cities have typically paid top dollar for water rights from willing agricultural sellers.¹⁰⁹ The recent crises in the Klamath and Middle Rio Grande—the only ones identified in the document—were not caused by urban growth; in fact, the Klamath situation involved nearly every type of water de-

103. See *supra* notes 16-17 and accompanying text.

104. *Water 2025*, *supra* note 2, at 2, 4-9, 11-12, 17, 26.

105. See *supra* notes 38-39 and accompanying text.

106. Only one area, the Umatilla Basin of eastern Oregon, appears to have been shaded for "conflict potential" based on unresolved tribal water demands. However, the map is somewhat difficult to interpret in this respect. Some shaded regions—the Phoenix-Tucson region, for example—seem to cover tribal lands incidentally. In other shaded areas, such as the Klamath Basin, tribal water needs are one of several key unresolved issues. A few other reservations, the largest of which are the Navajo and Hopi, are shown as having "unmet rural water needs" on the *Water 2025* map. *Water 2025*, *supra* note 2, at 9.

107. The Trinity River, for example, is yellow, while the rest of the Klamath Basin is orange. *Id.*

108. The Interior's focus on urban demands may stem, in part, from the fact that Secretary Norton and Assistant Secretary Raley are both from Colorado, where urban/rural water conflicts have long dominated the state's water scene, and environmental demands have had little or no impact on established water uses.

109. Municipalities have recently paid around \$3,500 per acre-foot of water in Nevada's Carson-Truckee Basin, around \$4,400 per acre-foot in the Middle Rio Grande, and upward of \$18,000 per acre-foot on the Colorado Front Range. This latter figure is based on a price of \$13,000 per share of Colorado-Big Thompson Project Water, and a normal annual yield of 0.7 acre-feet per share. *Water Market Indicators*, WATER STRATEGIST, Apr. 2003, at 7-9.

mand *except* growing cities.¹¹⁰ Instead, these intense crises were triggered by environmental water demands under the ESA that clashed with long-established irrigation uses. In recent years, these “environmental” water crises have been considerably more heated and bitter than water conflicts between municipal and agricultural water users—greater, perhaps, than any such conflict since Los Angeles surreptitiously dried up the Owens Valley.¹¹¹ This recent history indicates that the next generation of western water crises is likely to arise mostly from unsatisfied environmental water needs, not from the demands of growing cities.

3. Federal Agencies as Problem Solvers, Not Managers

A third basic idea underlying *Water 2025* is that the Interior’s proper role in western water issues is that of problem-solver, not water manager. At the outset, the document states repeatedly that “state and local governments should have a leading role” in meeting the West’s water supply challenges, and that “these decisions cannot and should not be driven from the federal level,” but rather from the local and regional levels.¹¹² The Interior’s more limited role is to “focus its attention and existing resources on areas where scarce federal dollars can provide the greatest benefits,” and to “work with states, tribes, local governments,” and stakeholders to address water supply challenges.¹¹³

In explaining its “Four Key Tools to Prevent Water Crises,” *Water 2025* gives numerous examples of services that the Interior has provided, will provide, or could provide, including: helping irrigation districts take steps to improve water use efficiency, such as installing water control structures or measuring devices, or lining irrigation canals¹¹⁴; collecting and delivering additional information on streamflows, groundwater supplies, and snowpack levels for water managers¹¹⁵; providing facilitators who can help resolve conflicts among competing water interests¹¹⁶; conducting research on desalination and advanced water treatment¹¹⁷; allowing new entities to use excess water storage and delivery capacity at existing federal projects¹¹⁸; and taking a host of actions to help water managers and stakeholders plan for, and deal with the impacts of, drought.¹¹⁹ Each action is typically described as helping others use or manage water more effectively.¹²⁰

Officially, “[t]he mission of the [USBR] is to manage, develop, and protect water and related resources in an environ-

mentally and economically sound manner in the interest of the American public.”¹²¹ *Water 2025*, however, does not speak in terms of the USBR managing water, or federal water projects, or anything else. Instead, the document basically offers various forms of federal assistance so that others can make the management decisions and take the steps needed to prevent water crises.¹²² The Interior is essentially saying in *Water 2025*: “We’re from Washington, and we’re here to help.”

V. Conclusion—Can *Water 2025* Deliver Results?

In 25 cautiously worded pages on realities, principles, and tools for addressing difficult water issues, *Water 2025* does little to raise expectations about its real-world significance for the West. Then, in conclusion, it boldly and unqualifiedly promises results in five key areas. Page 26 of the document states that “*Water 2025* will”:

- (1) Facilitate a cooperative, forward-looking focus on water-short areas of the West;
- (2) Help to stretch or increase water supplies to satisfy the demands of growing populations, protect environmental needs, and strengthen regional, tribal, and local economies;
- (3) Provide added environmental benefits to many watersheds, rivers, and streams;
- (4) Minimize water crises in critical watersheds by improving the environment and addressing the effects of future droughts on important local and tribal economies; and
- (5) Provide a balanced, practical approach to water management for the next century.

Thus, at the very end,¹²³ an understated document suddenly “talks trash,” guaranteeing real progress on some of the West’s toughest problems.

Water 2025 certainly sets worthy goals, but it seems doubtful that it can actually achieve them. After all, *Water 2025* is essentially just a discussion document with a set of general concepts, saying little or nothing on many of the toughest water issues, offering just a handful of modest federal commitments, and lacking meaningful funding. It calls on states, local governments, tribes, and stakeholders to take the lead in developing solutions to some of the West’s most intractable problems. Federal funding will help make solutions viable, but the U.S. Congress will have to provide the necessary money—no sure thing, especially in a time of massive federal deficits. In short, *Water 2025* can keep these

110. See Reed D. Benson, *Giving Suckers (and Salmon) an Even Break: Klamath Basin Water and the Endangered Species Act*, 15 TUL. ENVTL. L.J. 197, 201-06 & nn.64-66 (2002).

111. See REISNER, *supra* note 1, ch. 2.

112. *Water 2025*, *supra* note 2, at 2, 4. The document also speaks of the importance of decisions being made “at the appropriate level in advance of water supply crises.” *Id.* at 3.

113. *Id.* at 2, 3, 4.

114. *Id.* at 14-16.

115. *Id.* at 18.

116. *Id.* at 21.

117. *Id.* at 23.

118. *Id.* at 24.

119. *Id.* at 25.

120. For example, “Reclamation and USGS are partnering on the Watershed River System Management Program to create models that will help farm agencies, drought planners, and others better understand the unique aspects of the basin when they make critical decisions.” *Id.* at 18.

121. See <http://www.usbr.gov/main/about/mission.html> (last visited Aug. 18, 2003).

122. As stated by Secretary Norton: “We offer our expertise, our skill, and our information. But the hard work of preventing crises and conflict will take place in meeting rooms like these. Long-lasting solutions will come from the people who must live with or learn to live without the water they need.” Press Release, *supra* note 41.

123. The final page of the document offers only these two sentences of rhetorical flourish:

America’s *strength* has always depended on the great wealth of her natural resources and the ingenuity of her people. *Water 2025* will enable our nation to *prosper and grow* well into the 21st century and leave the legacy of a *healthy* environment, *community strength*, and *economic self-reliance* for *generations* to come.

Water 2025, *supra* note 2, at 27 (emphasis in original).

promises only if many things go just right, most of which are beyond the Interior's control.¹²⁴

It is also uncertain that *Water 2025* can meet its more modest goal of preventing crisis and conflict over water in the West. As discussed above, the biggest recent crises over water have involved environmental demands backed by the ESA. So long as the ESA continues to apply, crises seem likely to recur, particularly since *Water 2025* does little to ensure that environmental water needs will actually be met through any means short of the ESA itself.

While *Water 2025* can certainly be criticized in many respects, the Interior deserves credit for launching this initia-

tive. By asking the West to begin a serious public discussion on how it will meet its water needs, the Interior may help overcome the apathy that generally surrounds water issues (except in times of severe drought). By urging serious water planning for the future, *Water 2025* seeks to break the region's tradition of reactive, ineffective water policy that typically fails to meet contemporary water needs. In calling for water conservation, markets and improved operation of existing facilities, rather than new storage, *Water 2025* represents a step forward for common-sense water policy.

The important question, of course, is how *Water 2025* will be implemented. As USBR Commissioner Keys said at the time it was released: "Today, *Water 2025* is just words, ideas, and goals. Tomorrow, *Water 2025* is about action and results."¹²⁵ It remains to be seen just how far these actions and results will go, both within the Interior and beyond. Time will tell if *Water 2025* will simply mean business as usual, somewhat improved and updated—Bureau version 6.0—or will actually provide a blueprint for balance in managing the water resources of the West.

124. The Frequently Asked Questions document, *supra* note 39, concludes with the question: "In the end, what do you hope to achieve with *Water 2025*?" The response does not really answer the question, and avoids making promises about the results that *Water 2025* will produce:

We want to accomplish two things: First, *Water 2025* recognizes the need for a vigorous public discussion over water issues. Doing nothing will have significant negative consequences, and the public must be able to make an educated choice about their future. Second, *Water 2025* is a commitment to moving forward in strategically using the appropriate tools that will help minimize or prevent future water conflict and crises in the West.

125. Commissioner Keys went on to say that the Interior would be preparing an action plan and developing a list of pilot projects that could be implemented in FY 2004. Closing Remarks, *supra* note 41.