

The Network Note July 2021

Focus on Wyoming

Dam Removal in the Klamath River: A Long Overdue Recognition of the Federal Government's Trust and Treaty Responsibilities August 11 at 10 am PDT/11 am MDT

The 2002 fish kill of 33,000 salmon energized tribal efforts to remove the four hydropower dams on the Lower Klamath River. For more than a decade, the tribes, the states and the Federal government have sought the dams' removal, leading to a successful recent settlement. Speakers from the Yurok Tribe, CA Fish & Wildlife, UC Berkeley, and Klamath River Renewal Corp. will offer perspectives. [REGISTER HERE.](#)

WY: First Statewide Water Right Adjudication

The State of Wyoming deserves recognition for its leading effort to adjudicate water rights in its state, starting in its first year of statehood, 1890. Its first-in-the-nation effort got started by a State Engineer with a name that Colorado River Basin water users will recognize – Elwood Mead, as in the 1920's Bureau of Reclamation Commissioner and Lake Mead.

In 1888, as Wyoming leaders moved toward statehood, they recruited Elwood Mead from Colorado Agricultural College, to help them create a state water law and constitution. The Territorial Legislature had passed laws on water since 1869, but statehood required more, including constitutional rules.

The 1889 Constitutional Convention placed water under the ownership and control of the State, adopted the Appropriation Doctrine, and established the State's water governance:

- *Water Divisions* cover four watershed regions.
- *Board of Control* includes the State Engineer and the four water division superintendents. Regulates and supervises establishment, change and elimination of water rights.
- *State Engineer* issues the permits required for any water use, applying the beneficial use standard codified in 1909.

Upon WY statehood, the governor appointed Mead as the first State Engineer. Mead worked with the first Legislature to delineate the four water divisions and adopt a 15-page state water law adopting the new system of state approval and regulation of water use. The law also set out the process for the regional superintendents to take testimony on entire streams and the Board of Control to adjudicate water rights across the state. Mead and the Board of Control set about adjudicating the water rights statewide, which took a decade.

Colorado River Basin Debate – Demand Management?

Southwest WY lies at the top of the Colorado River basin, with its Green and Little Snake Rivers flowing into Colorado and Utah. Many irrigation rights in those basins date from before the 1922 Colorado River Compact. The Compact bars WY and the other Upper Basin states from depleting flows to the Lower Basin below a set level. A severe River shortage could require the Upper Basin to curtail water rights, but that has never occurred in the Compact's 100-year history. In 2019, the Upper Colorado River Commission negotiated new storage space in Lake Powell *if* its states create a demand management program. In essence, that would provide storage for water users, who would be paid to conserve. WY water users are considering their options

Fracking & Water Conflict – Southeast WY

Oil companies use hydraulic fracturing (“fracking”) to access oil and gas in southeast WY and northeast CO. Recent water right applications by a farming family for groundwater has raised local concerns about its potential use for fracking. The wells could affect Horse Creek and some have raised the possibility of using WY Constitutional authority to deny a water right in “the public interest,” a clause rarely invoked.

Big Horn River Adjudication (1977-2014) – Northwest WY

A WY court completed the adjudication of state and tribal reserved water rights of the Wind and Big Horn River systems in 2014. The adjudication had required 37 years and multiple visits to both state and federal supreme courts.

WY Executive Branch Water Agencies

The 1890 WY Constitution established the executive branch framework for managing WY water. Today, WY water governance also includes:

- *Department of Environmental Quality* regulates water quality pursuant to the federal Clean Water Act.
- *Water Development Commission* is similar to US Bureau of Reclamation, developing water projects for farmers and cities. Created [WY Water Plan](#), which included basin plans, originally in 1973 and again in the 2000s.

Thanks to Anne MacKinnon, author of *Public Waters: Lessons from Wyoming for the American West*, for her invaluable assistance with this edition. She has a wealth of knowledge about WY water.

Ideas for Network Note? Court Decision on Water? Contact ALFIII@sbcglobal.net