Dividing the Waters Water Data Workshop Developing
This month, the Conveners heard a presentation from the Western States Water Council on its west-wide Water Data Exchange (WaDE) program. WaDE may be part of a future water data workshop. If you have ideas for this workshop, please contact DTW Executive Director Steve Snyder.

CA Water Legislation Update
CA Governor Gavin Newsom is now in his final weeks of deciding whether to sign or veto the first set of bills sent to his desk. The deadline is October 13. Two significant water bills went to his desk – SB 1 (Atkins) and AB 658 (Arambula).

Newsom vetoed SB 1, the bill that would incorporate federal environmental rules that the Trump Administration rolls back into state law. The final disputed issues related to water – WOTUS/wetlands and endangered species, including application of the CA ESA to federal water projects. The bill’s final set of amendments addressed two issues – deleting the WOTUS language and giving CA Fish & Wildlife discretion to adopt new science into its ESA regulation of water projects, particularly in the CA Delta. The bill, however, retained the finding that the CA ESA was part of CA water law that applies to federal water projects. Water agency and agricultural opposition to that provision attracted the veto.

The Governor has not indicated his intent on AB 658, but it enjoys broad support and is likely to be signed. This bill would allow the State Water Board to issue a 5-year permit to water agencies to divert surface water into groundwater storage, to support the sustainable management of CA groundwater resources. This bill supports “groundwater sustainability agencies,” as they complete and submit required Sustainable Groundwater Management Act plans in 2020.

CA:  SWRCB Expands Recycled Water Use in Ag
CA State Water Resources Control Board recently authorized use of recycled water for agriculture and fish and wildlife habitat enhancement purposes. Its decision allows the Sacramento Regional County Sanitation District to deliver an average of 45 million gallons per day of recycled water from its regional wastewater treatment plant to the County’s southern area for agricultural irrigation and fish and wildlife habitat enhancement purposes. The plant is in the final phase of its improvement program for tertiary treatment. Instead of discharging all its water to the Sacramento River and the CA Delta, the District’s program will convey recycled water through a pipeline to southern Sacramento County, which has the Cosumnes River, the last undammed Central Valley river.

Idaho:  Feds Not Allowed to Hold Grazing Water Rights
In the last two years, the Idaho Legislature passed laws to codify a 2007 Idaho Supreme Court decision that held that the Bureau of Land Management (BLM) cannot obtain an instream stockwater right unless it actually owns livestock and puts the water to beneficial use.

The Idaho Supreme Court held, in Joyce Livestock Co. v. US (2007), that BLM could not hold an instream water right in Idaho because it did not own cattle that beneficially used the water by drinking from the stream. The Court denied BLM’s claim that competed with claims by BLM’s grazing permittees along Jordan Creek. It rejected BLM’s argument that allowing its permittees to hold the water rights would lead to a monopoly on federal grazing lands. The Court explained that the permittees’ water rights did not give them any rights to trespass on federal land to exercise their rights.

The Court’s explanation countered arguments among some western grazers that a water right on federal land provided a right to graze cattle on federal land, so that they can exercise their state water right. Under the 1866 Mining Act, a person who established a water right on federal land received a perpetual right-of-way for a ditch to take the water off federal lands. Property rights advocates, including Clive Bundy, had made this argument in federal litigation, such as the Hage takings case in the Court of Federal Claims. The Idaho Court effectively nullified this argument for grazers in its state.

The Idaho Legislature codified the Joyce decision in 2018, barring federal agencies from obtaining stockwater rights and lessees from acting as federal agents. The act also limited future use of any federal stockwater rights to livestock uses.

The 2018 act required the IDWR director to identify federally held stockwater rights and order the federal agency to show cause why the rights should not be forfeited under Idaho law barring federal ownership. The IDWR director has not completed this process and the Department of the Interior has not submitted a list of its stockwater rights, which it received pursuant to the Snake River Basin Adjudication (SRBA). (DTW Convener Judge Eric Wildman completed the SRBA and signed the decree in August 2014.) These federal rights remain an issue for both the state and federal governments.

Still Looking for State Legislative Updates!!
If your state legislature passed any water bills in 2019, please contact the Network Note editor, Alf Brandt.

Recent court decision? Something to share? Contact the Network Note Editor at ALFIII@sbcglobal.net
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