

WATER RESOURCES**State Legislation****April 19, 2024**
Special Report #2605

On April 10, the Idaho State legislature adjourned its 2023-2024 legislative session. Other Western States that have adjourned include: New Mexico (02/15); Oregon (03/07); South Dakota (03/26); Utah (03/01); Washington (03/07); and Wyoming (03/08). The following report includes some of the water-related legislation that was passed in each State's respective sessions.

Idaho

On March 28, Governor Brad Little (R-ID) signed HB697, which allows the Idaho Department of Water Resources (IDWR) to petition a district court judge to commence a water rights adjudication in the Kootenai River Basin. Governor Little also signed bills opposing the removal or breaching of the dams on the Columbia-Snake River System and its tributaries (SJM103), and creating a process for the IDWR to expand the boundary of the Eastern Snake Plain Aquifer (ESPA) area of common groundwater supply (SB1341). The new ESPA process authorizes IDWR to conduct notice-and-comment procedures for ESPA surface and groundwater users. Notably, the State Affairs Committee introduced a bill in February (SB1370), which would remove the use of domestic wells in subdivisions of 10 lots or more (5 acres or less in size). The bill was supported by the Farm Bureau.

New Mexico

On February 28, Governor Michelle Lujan Grisham (D-NM) signed HB148, which authorized funding for dozens of water projects and allows the New Mexico Finance Authority to make loans or grants to qualifying water projects. Governor Lujan Grisham also signed bills to qualify wastewater projects for funding through the Water Trust Board (HB211), and to change cost-share provisions for the land and conservation fund, removing a population cap and prioritizing tribal and smaller governments (SB169).

Oregon

On April 17, Governor Tina Kotek (D-OR) signed SB1530 and SB1537 which both contribute to Kotek's \$376M Emergency Housing Stability and Production Package. SB1537 included \$3M for the Housing Infrastructure Support Fund for planning and financing water and transportation infrastructure. Governor Kotek also signed SB1567, which directs the Oregon Water Resources Department to work collaboratively with Washington State, federal agencies, tribes, and water users to manage water resources in the Walla Walla River Basin pursuant to the Walla Walla Water 2050 Strategic Plan. The bill closely resembles a Washington bill, signed into law in 2023 (HB1322). SB1567 goes into effect January 2025.

South Dakota

On March 26, Governor Kristi Noem (R-SD) signed SB70 and HB1064, appropriating funds for the replacement, maintenance, and repair of state-owned dams as well as infrastructure for Lake Alvin and Newell Lake. Governor Noem also signed SB53 and SB66, which fund water and wastewater projects through the state fiscal recovery fund provided by the American Rescue Plan Act (ARPA). Noem signed HB1128 in February, which requires a zoning authority to consider whether a well is established and in use, rather than abandoned, before making a permitting decision. Of note, in January, State Senator Red Dawn Foster (D-SD) introduced SB93, which would amend the definition of "public infrastructure" with regard to housing infrastructure loans and grants. The amendment would make federally-recognized Indian tribes eligible for funding support provided by housing infrastructure loans and grants for infrastructure projects such as roads, water distribution systems, sanitary sewer systems, bridges, traffic signals, and the land necessary for such purposes.

Utah

On March 21, Governor Spencer Cox (R-UT) signed SB211, which creates a Water Development Coordination Council (WDCC) made up of four of the State's largest water-planning authorities and a governor-appointed water agent. The bill directs the board to address anticipated (50-75 year) water needs. Governor Cox also signed a related bill, HB280, which requires the Utah Division of Water Resources to publish a state water plan consistent with the state water infrastructure plan (to be developed by the WDCC created through SB211). The bill adds the State Engineer and the Director of the Division of Natural Resources to the Watershed Council as non-voting members, and directs the WDCC to adopt a unified

water infrastructure plan and develop a prioritization process for Water Infrastructure Fund projects.

On March 13, Cox signed SB18 which allows farmers using water-saving technologies to save, monetize, and sell their excess water without losing their water rights. He also signed SB125, which increases the number of secondary-water suppliers required to meter. Previously, secondary-water suppliers with less than 1000 users were exempt from metering requirements. The bill raises that threshold to 2500 users, except for those in the Great Salt Lake Basin. Cox also signed SB77 which provides flexibility for the State Engineer to allocate funds toward investments to assist in water rights adjudications. These investments include measurement infrastructure, streamgage cost-sharing, and the acquisition and management of water data.

On March 12, Cox signed HB453 which establishes a comprehensive regulatory scheme for mining companies using evaporation ponds near Great Salt Lake. Mineral leases and royalty agreements through the Division of Fire, Forestry, and State Lands must include provisions requiring the reduction of water diversions equal to the volume a mining company does not put to beneficial use or intentionally reduce within a given timeframe. The bill also directs the State Engineer to regulate water within the Great Salt Lake under a distribution management plan based on principles of prior appropriation and multiple sustained yield, and requiring the State Engineer to establish a priority schedule for the lake. The bill also requires diversions and effluent to be physically measured and places limits on discharged salinity. Cox also signed SB61 which authorizes the State Engineer to create rules regarding water distribution accounting and the use of technologies, now including telemetry, to measure water use.

Washington

On March 26, Governor Jay Inslee (D-WA) signed SB5828 which authorizes county superior court judges to appoint court commissioners for water rights adjudications. The bill specifies the power of water commissioners and authorizes the appointment of water adjudication referees without consent of the parties. On March 15, Governor Inslee signed HB1752 which allows the U.S. Bureau of Reclamation, under special circumstances, to apply for a change in the number of acres that could be irrigated with its water rights within the Columbia Basin Project. The change will help with an expected caseload increase resulting from the Nooksack River water rights adjudication. The bill is effective June 6.

Wyoming

On March 20, Governor Mark Gordon (R-WY) signed SF75 and HB104 which appropriated funds for water development program projects and studies. Governor Gordon also signed SF66, which addresses concerns that water right exchanges, which are encouraged by the state, could result in the loss of that water right. When a water source is insufficient to fully satisfy appropriations, water rights holders may petition the State Engineer for an order allowing an exchange and use of stored, direct flow, or groundwater from another source, or from another appropriation from the same source, as long as the rights of other appropriators are not injured. The bill clarified: "No loss, abandonment or impairment of any water rights involved in the exchange shall occur.... Upon termination of the exchange, the rights of all appropriators under their original appropriations shall automatically be reinvested...."