

Nebraska Violations. Wyoming alleged that Nebraska was violating the decree by demanding natural flows and storage water from above the Tri-State Dam and diverting those waters for uses below the Dam. The Special Master found most claims "too theoretical and not sufficiently anchored to concrete pleadings or an adequately developed factual" record for resolution at this time. The Court agreed. However, the Court did rule that the decree does not impose "absolute ceilings on diversions by canals taking" in the pivotal reach. Instead, "Nebraska is free to allocate its share among its canals as it sees fit."

U.S. Supreme Court Holds U.S. Exempt from Fees for Snake River Adjudication

In an unanimous decision, the U.S. Supreme Court reversed an Idaho Supreme Court decision requiring the federal government to pay over \$10 million in filing fees for federal claims submitted in the Snake River adjudication. The decision turned on the meaning of the McCarran Amendment, which waives the United States's sovereign immunity for the purpose of adjudicating water rights.

The Court based its decision on the portion of the Amendment that states: "no judgment for costs shall be entered against the United States." While the Idaho Supreme Court found that the filing fees required by Idaho law were distinct from "costs," the U.S. Supreme Court disagreed. When Idaho revised its system for adjudications in the mid-1980s, the U.S. Supreme Court noted, "many of the items formerly taxed as 'costs' to the parties at the conclusion of the adjudication were denominated as 'fees,' and required to be paid into court at the outset." Therefore, the Court reasoned, this "blurred" the line between costs and fees. In other words, Idaho cannot avoid U.S. sovereign immunity from costs by devising a scheme that only renames "costs" to be "fees".

H.R. 2043 Introduced to Reauthorize Endangered Species Act

On May 6, Senator Max Baucus (D-MT) and Representative Gerry Studds (D-MA) introduced companion legislation to reauthorize the Endangered Species Act. H.R. 2043 emphasizes the conservation of ecosystems rather than individual species. It contains many specific provisions intended to improve the process of listing and de-listing species, recovery planning, cooperation with states and among federal agencies, as well as provide federal assistance to private landowners to conserve species.

In recovery planning, for example, the Interior Secretary must seek to minimize the social and economic impacts of recovery plans. Specific elements in plans would include:

- 1) a description of actions that would minimize the social and economic impacts of recovering the species;
- 2) identification of areas and circumstances where Habitat Conservation Plans would contribute to species recovery and minimize the impacts between species conservation and economic activity;
- 3) identification of areas and circumstances where agreements with private landowners would promote recovery.

The bill would direct the Secretary to solicit participation in the preparation of recovery plans by those affected by the recovery plan. While existing recovery plans would remain in effect, the Secretary would be authorized to revise the plans to meet the new standards.

To encourage the protection of habitats of species that are not yet listed, the bill would authorize the development of Habitat Conservation Plans for candidate species. This is intended to allow communities to address species concerns before listing. The bill would authorize the Secretary to issue an incidental take permit (which is effective upon listing) for plans prepared for candidate species. A \$20-million fund would be established to provide grants and loans for the development of the plans. A pilot project would be established that would use market incentives to implement a Habitat Conservation Plan.

The Secretary would also be authorized to enter into agreements with private landowners that would promote conservation of listed and candidate species. Landowners would receive technical assistance and funds to implement the agreements. The bill would authorize \$25 million for the program. Within one year of passage, the Interior Secretary, in consultation with the Treasury Secretary, would submit a report to Congress that (1) analyzes federal expenditures, financial assistance, and tax incentives and disincentives for private landowners to conserve habitat for listed or candidate species, (2) analyzes federal statutory and regulatory mechanisms that are harmful to listed and candidate species, and (3) recommends changes that would promote conservation of listed and candidate species.

The bill also proposes significant increases in appropriations for carrying out the act. The Department of Interior would receive \$110 million for FY 94, increasing to \$160 million in FY 99, more than doubling Interior's current authorization. The Department of Commerce would receive \$15 million in FY 94, increasing to \$40 million for FY 99, also more than doubling Commerce's current authorization.

Representative Studds is Chairman of the House Merchant Marine Committee. Hearings on H.R. 2043 are expected this month.

CA: Bureau Releases Criteria for CVP Conservation Plans

On May 20, the Mid-Pacific Region of the Bureau of Reclamation publicly announced that it met its April 20 deadline to establish criteria to evaluate water conservation plans required by the *Central Valley Project Improvement Act (CVPIA)* passed by Congress last year. By law, the criteria identifies best management practices including efficient water management techniques developed according to California law. The criteria will be reviewed every three years to incorporate new information.

All parties or districts that hold contracts for water service greater than 2,000 af/year for municipal and industrial use or agricultural contracts servicing more than 2,000 acres will be evaluated, based on information detailed in the criteria, to develop, implement, monitor, and update their water conservation plans. There are eight steps: (1) coordinate with other agencies and the public, (2) describe the District, (3) inventory water resources, (4) review past water conservation plans and activities, (5) identify best management practices to be implemented, (6) develop schedules, budgets, and projected results, (7) review, evaluate, and adopt the water conservation plan, and (8) implement, monitor, and update the water conservation plan.

Under the CVPIA, the newly-created Water Conservation Center must complete its evaluation of water conservation plans by April 30, 1994. If some of the data called for in the 24-page document describing the criteria are not available, the District shall include in its plan how it will gather those data and have them available for the next plan update. The Bureau has contracted with the California Department of Water Resources to provide assistance to water districts preparing water conservation plans.

STATE POLICY ACTIONS

AZ: Governor Signs Bill Creating Replenishment District in Central Arizona

On April 21, Governor Symington signed into law S.B. 1425, a bill that authorizes the Central Arizona Water Conservation District (CAWCD) to operate the Central Arizona Groundwater Replenishment District (CAGRD) in Maricopa, Pinal, and Pima counties. CAGRD must replenish groundwater for members pursuant to 20-year plans filed every 10 years describing the types of water to be used to meet replenishment obligations, the sites where replenishment will occur, and the district's financial ability to meet those obligations. It may build, operate, and maintain replenishment