

## SNAKE RIVER BASIN WATER RIGHT ADJUDICATION

by

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### Recent History

In 1982 the Idaho Supreme Court handed down its decision in the Idaho Power Company v. Idaho Case involving Idaho Power Company's water rights at Swan Falls Dam. The court ruled that the water rights at Swan Falls had not been subordinated by the 1950's era agreement which allowed Idaho Power Company to build the Hells Canyon hydroelectric complex as had been asserted by the state. This ruling by the court meant the state of Idaho went from a partially appropriated to an overappropriated water system on the Snake River.

Attempts were made during both the 1983 and 1984 Idaho legislative sessions to resolve the conflict that existed between upstream development interests and the supporters of Idaho Power and instream flow interests. A legislative solution was not reached and a legal cloud existed over the status of thousands of Snake River water rights. In addition, new development could not proceed since unappropriated water was not available in the Snake River and its tributaries if Idaho Power's hydropower water rights were to be satisfied.

In 1984 the state, through the Governor and the Attorney General, and Idaho Power were able to agree to negotiate a settlement to the Snake River water rights conflict. Incentive to solve the conflict by negotiations came from the recognition that a solution was necessary and the anticipated delay, expense and uncertainty that would be involved in a litigated solution.

After much effort by all parties involved, the negotiations were successful and the Swan Falls Agreement, which resolved the conflict with the Idaho Power's water rights from Swan Falls upstream, was signed on October 25, 1984. Included with the agreement among other requirements was a requirement to adjudicate the water rights in the Snake River Basin.

### The Adjudication Process

The term "adjudicate" means to settle judicially. A water right adjudication should be termed "a fair, comprehensive, technically correct and legally sufficient determination (identification and quantification) of existing water rights". In Idaho adjudications are conducted by the court and the Department of Water Resources acts as a technical expert for the court in conducting investigations of existing water rights. The department has extensive responsibilities spelled out by statute, to the state and the court in water right adjudications.

On June 17, 1987 the Director of the Department of Water Resources filed a petition in the District Court of the Fifth Judicial District in Twin Falls to commence the Snake River Basin Adjudication. The Honorable Daniel C. Hurlbutt, Jr. set a hearing on the commencement petition for September 8, 1987 in Twin Falls. The director's petition proposed to adjudicate the Snake River Basin upstream from and including the Salmon River drainage.

The court, in its commencement order of November 19, 1987 determined the Boise, Weiser, Payette and Lemhi Basins should be included in the adjudication and the adjudication should be extended downstream to include the remainder of

the Snake River in Idaho and the Clearwater Basin. An appeal of the inclusion of the Boise and Weiser River drainages is currently being considered by the Idaho Supreme Court.

The district court has entered an order establishing procedures to be followed by anyone wishing to make filings with the court. Anyone wishing further information as to the procedure may contact the department.

The department has begun soliciting notices of claims to a water right from water users in the Snake River Basin. Because of the size of the basin to be adjudicated water users are being notified by counties of the need to file their claims. After notification water users have 90 days to complete their claims and file them with the department. Department staff are available if assistance is desired. The department also has available existing water right records, maps and aerial photography to assist with the claims taking process.

Department staff will compare water rights claimed with known water uses to be certain the water rights claimed are complete and accurate. Investigation of water uses will be conducted using available data, computer and satellite technology as well as field inspections. Investigations will also be conducted to determine land ownership, so land owners who have not claimed water uses identified by the department can be notified of their duty to file a claim for their water use.

At the completion of the investigation, the department will compile a report of water rights for the court. This report will identify the elements of each water right so that the right can be properly identified as a property right as well as quantified for proper delivery of water.

Those water rights that have been previously decreed will be reaffirmed and updated by the Snake River Adjudication. Since some older decrees do not identify all the elements necessary to properly deliver a water right, the Snake River Adjudication will make the ownership of these rights more secure through their proper identification as they exist today reflecting the changes that have taken place since the original decrees were completed.

As the adjudication proceeds, claimants who disagree with the findings of the department will be urged to meet with the department to resolve those differences. If the differences between the department's determination and claimant's view of his water right cannot be resolved, the question will ultimately be settled by the court.

#### Federal Water Users To Be Included

Under the 1952 McCarran Amendment, the U.S. Government can be joined in a state court action for the purpose of adjudicating water rights. The state court, after the commencement hearing, has determined the extent of the area to be included to obtain "general adjudication" jurisdiction over the U.S. Government as required by the McCarran Amendment.

The state of Idaho, through the Idaho Water Resource Board, has entered into and will continue negotiations with the Shoshone-Bannock Indian Tribes to determine the extent of the Tribes federally reserved water rights for the Fort Hall Reservation. A negotiated determination of the Tribes water rights could save years of litigation and millions of dollars in the time and cost of the Snake River Basin Adjudication.

Other Indian tribes and federal agencies holding land reservations in Idaho have been contacted regarding the negotiation of their reserved water rights. Contacts with these entities are continuing and further negotiations are anticipated and will proceed concurrently with claims filing for state acquired water rights from private water users.

Effect of the Decree

The new decree will provide for the identification and security of ownership of water rights that has not been available since the early 1900's if ever. The decree will be binding on all water users and will identify the water rights as they exist today. This will minimize future challenges against those water rights as long as the rights continue to be used according to law.

The Snake River Basin Adjudication will be the largest adjudication attempted to date in Idaho and probably the largest in the nation. Thus far, the state has adjudicated other rivers including the Payette River Basin in which more than 9,000 water rights were decreed. The extent of the Snake River Basin Adjudication proposed in the court's commencement order may result in the determination of as many as 185,000 water rights. A two year effort has begun to take the claims of 185,000 water users.

The adjudication of the Snake River water rights will be a time consuming, costly effort for the state and water users. This adjudication is essential, however, to provide the state with a key element required to manage and regulate this valuable resource in the future.

If you have questions about the Snake River Basin Adjudication you may contact the Water Resources office nearest you or the Water Resources State Office at 334-7906.