

Considerations for Water Right Adjudication in North Idaho

Information Update for
United States Department of Justice
May 20, 2008

Clive Strong, Deputy Attorney General
Chief, Natural Resources Division

Garrick Baxter, Deputy Attorney General
Lead Attorney, Water Right Adjudication Unit

Dave Tuthill, Director
Idaho Department of Water Resources

Discussion Items

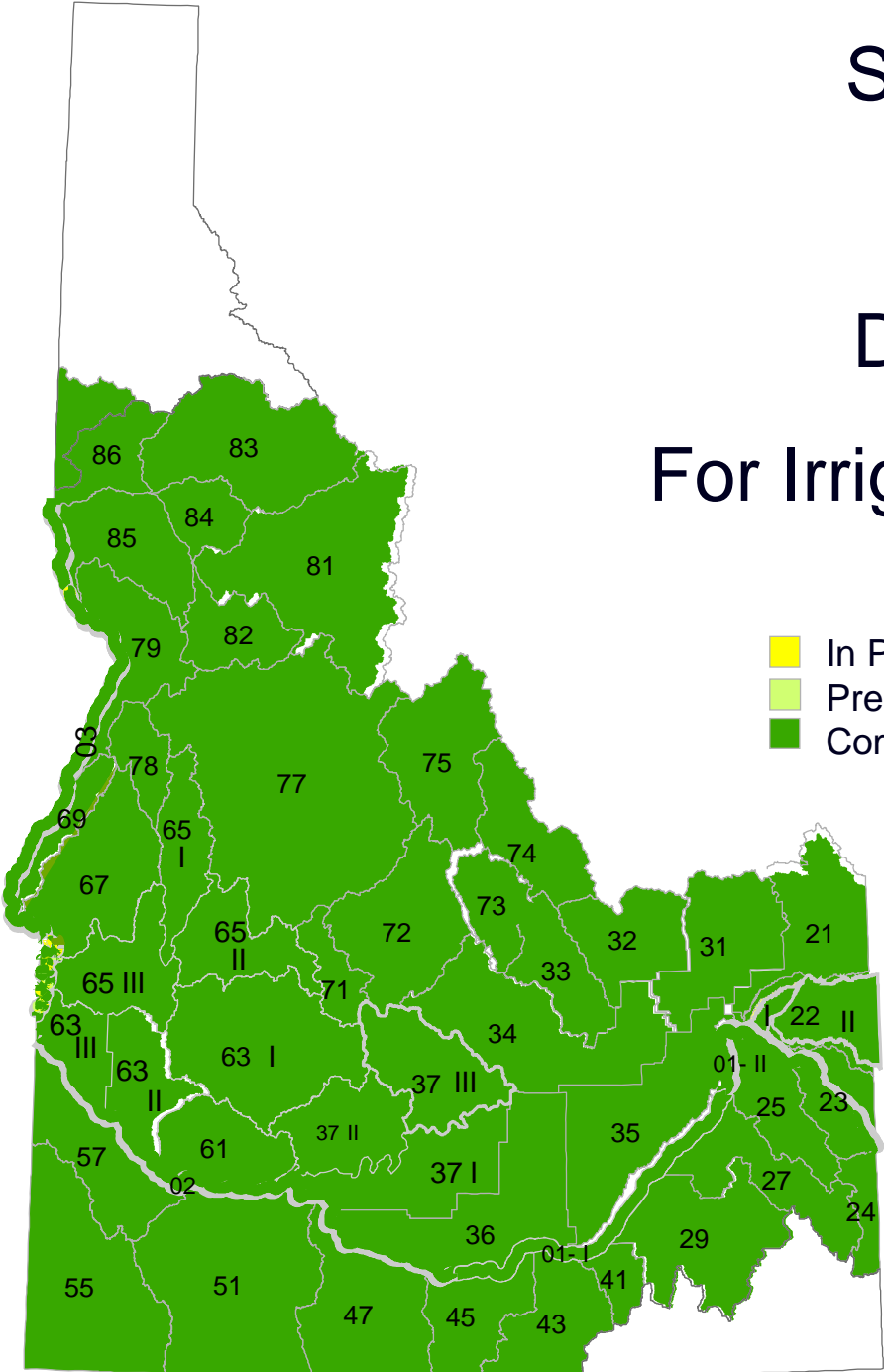
- Overview of North Idaho Adjudication.
- Boundaries of the Coeur d'Alene River Basin adjudication.
- Stipulation on deferral of small domestic and stock water rights.
- State/Federal/Tribal coordination.

Snake River Basin

Adjudication

Director's Reports

For Irrigation and Other Rights



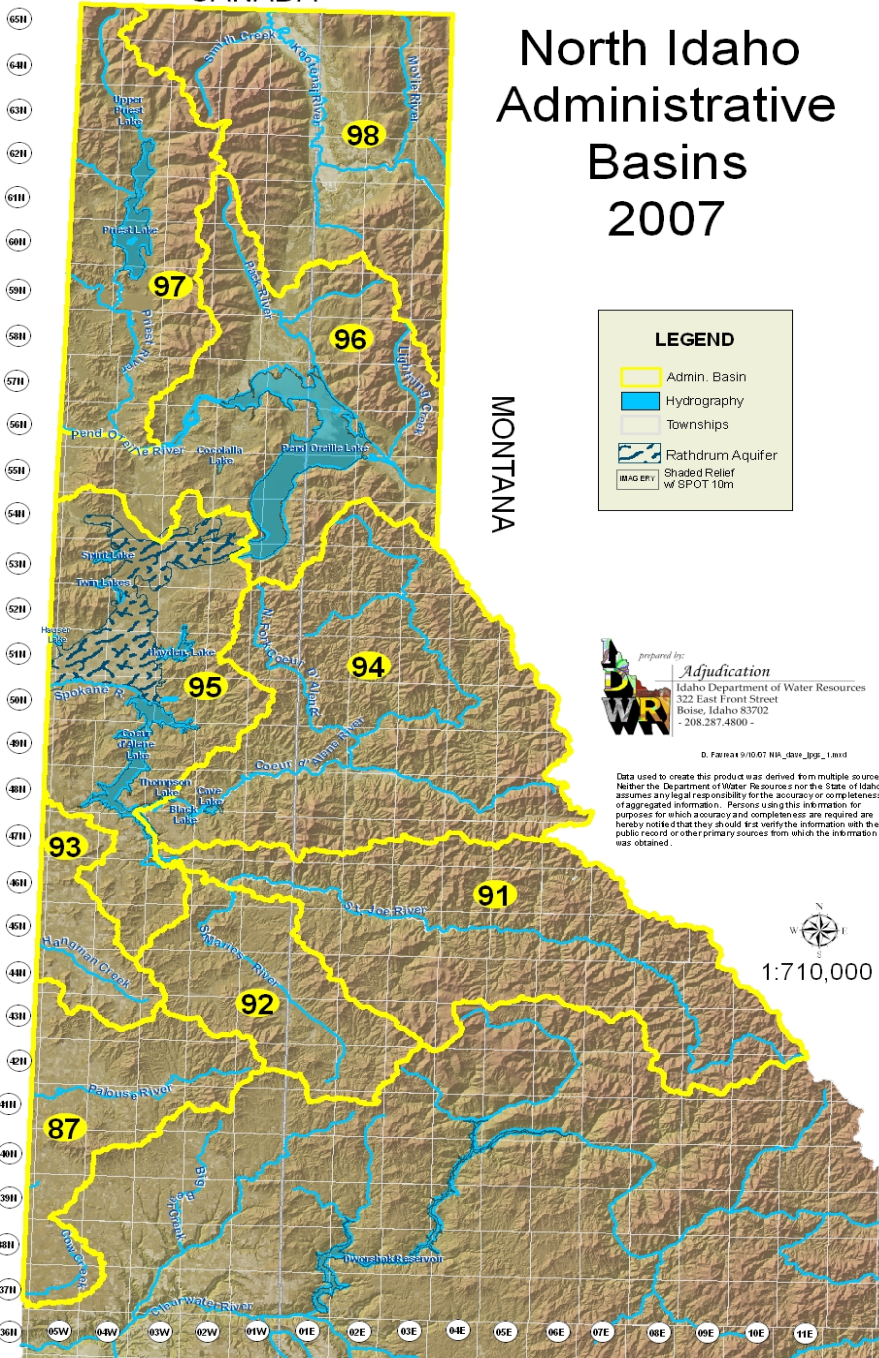
- In Progress
- Preliminary Findings Distributed
- Completed

CANADA

North Idaho Administrative Basins 2007

WASHINGTON

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LEGEND

- Admin. Basin
- Hydrography
- Townships
- Rathdrum Aquifer
- Shaded Relief w/ SPOT 10m

prepared by
Adjudication
 Idaho Department of Water Resources
 322 East Front Street
 Boise, Idaho 83702
 - 208.287.4800 -

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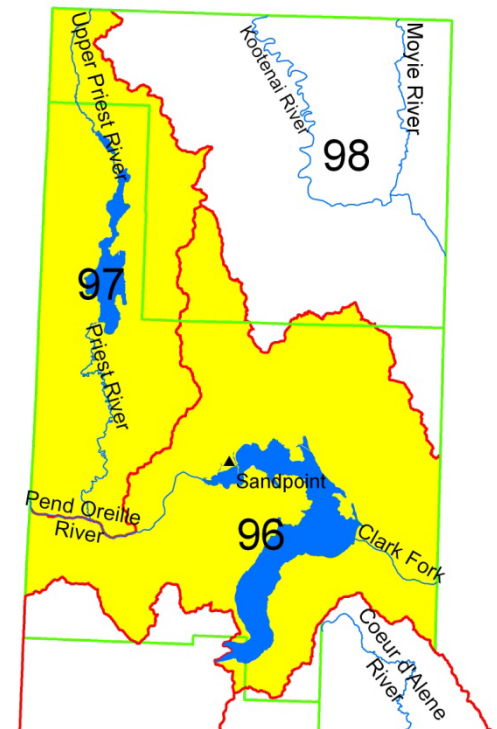
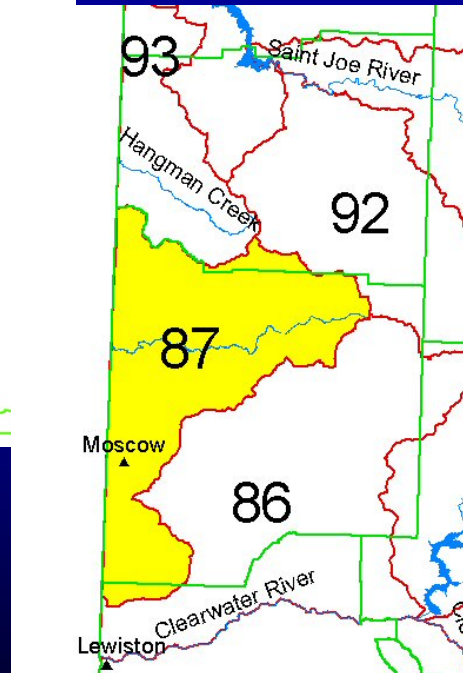
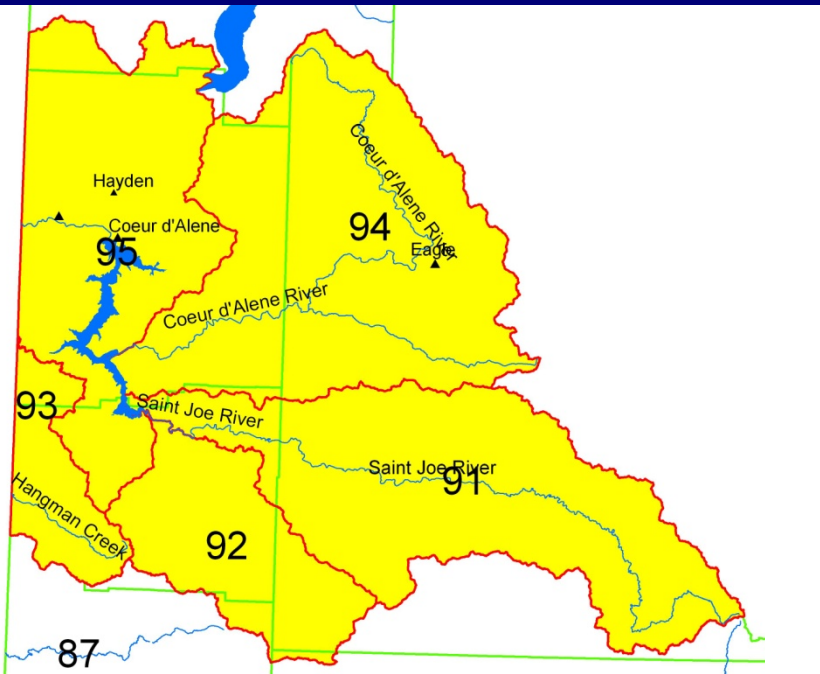


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Scope of North Idaho Adjudication

Idaho Code § 42-1406b



Projected Milestones – By Fiscal Year – Northern Basins

Fiscal Year	Basins 91-95	Basin 87	Basins 96-97
FY08	Prepare infrastructure		
FY09	Conduct meetings, commence, take claims, conduct field examinations		
FY10	Take claims, conduct field examinations, prepare recommendations	Conduct meetings, commence, take claims	
FY11	Prepare recommendations, file Directors Reports	Conduct field examinations	Conduct meetings, commence, take claims
FY12	File Directors Reports, Dispute Resolution	Prepare recommendations	Conduct field examinations
FY13	Dispute Resolution	File Directors Reports	Prepare recommendations
FY14		Dispute Resolution	File Directors Reports
FY15			Dispute Resolution

Projected Counts

Basin	Decrees	Licenses & Permits	Statutory Claims	Totals	No. of Recorded Wells	Predicted Adj Counts
87		186	113	299	1594	1500
91		113	69	182	495	
92		141	65	206	849	
93		33	42	75	303	
94		411	210	621	1885	
95	716	1632	665	3013	7326	
Total 91-95	716	2330	1051	4097	10858	13000
96	24	1598	493	2115	9698	
97		335	168	503	1799	
Total 96-97	24	1933	661	2618	11497	9000
Totals						23500

Water rights administration

- For IDWR to be able to administer a water right:
 - A water district is created.
 - Idaho Code § 42-604 directs IDWR to divide the state into water districts.
 - The water right must be decreed or based upon license or permit.
 - IDWR cannot administer constitutional rights (aka beneficial use rights).

2008 Idaho Legislature

- Change in scope of the adjudication.
 - Petition must include a request for the deferral of domestic and stockwater rights as defined by Idaho Code § 42-1401A (4) and (11).
 - Petition must request that a commencement order be issued only if the court determines it is possible to defer the domestic and stockwater rights within the terms of the McCarran amendment.

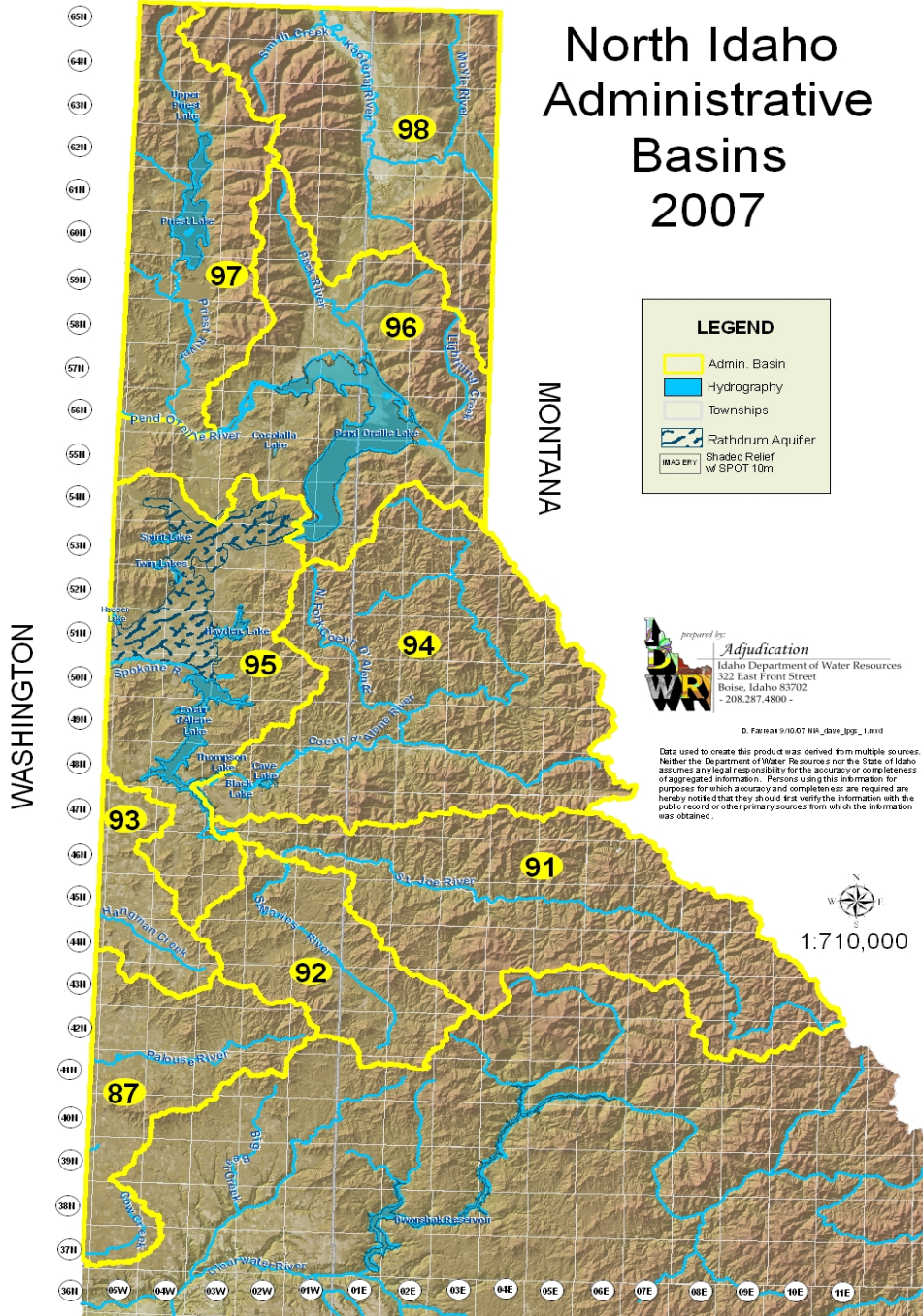
Petition to Commence Coeur d'Alene River Basin Adjudication

- Draft petition complete.
 - Describes boundary for the adjudication.
 - Requests that court defer small domestic and stockwater claims consistent with Idaho Code 42-1406b.
- State welcomes comments from United States and Tribes on draft petition.
- State wants to work with United States and Tribes to try to have petition filed no later than June 16, 2008.

Boundary for
Coeur d'Alene River
Basin Adjudication

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North Idaho Administrative Basins 2007



LEGEND

- Admin. Basin
- Hydrography
- Townships
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Spokane River Basin / Pend Oreille River Basin Divide

- Boundaries based upon geographical divide of surface water.
- Surface water from Lake Pend Oreille flows north then west into Pend Oreille River Basin.

Spokane River Basin / Pend Oreille River Basin Divide

- USGS reports suggest that some water from Lake Pend Oreille seeps into Spokane River Basin.
- Amount is “very uncertain.”
- Best estimate is 36,000 AFA (based on mass balance modeling).
- Compare to the 4,475,000 AFA of water that leaves Spokane River basin (0.8%).
- Compare also to the 17,633,000 AFA of water that leaves the Pend Oreille River basin (0.2%).
- Given the geographical divide, logical to divide the adjudication here.

Stipulation Regarding Small Domestic and Stockwater Rights

Stipulation

- How does this stipulation compare with the SRBA Stipulation?
 - Almost identical to the SRBA stipulation.
 - Changed name of adjudication and updated citations.

What does the stipulation do?

- Stipulation provides that a claim to a water right in the adjudication may, but is not required, to be filed for small domestic and stockwater rights at this time.

What types of water rights are deferrable?

- Only small domestic and stockwater rights as defined by Idaho Code § 42-1401A (4) and (11) are deferrable.

Small Domestic Water Rights

- Domestic use includes the use of water for homes, organization camps, public campgrounds, livestock, and any other purpose in connection therewith, including the irrigation of up to $\frac{1}{2}$ acres of land, if the total use is not in excess of **13,000** gallons per day.
- Other uses that do not meet the definition of domestic uses above are limited to a diversion rate of .04 cfs and a diversion volume of **2,500** gallons per day.

Stockwater uses:

- The use of water solely for livestock where the total diversion is not in excess of **13,000** gallons per day.

Key Points of the Stipulation:

- Deferred water right holders are joined to the adjudication. They are bound by terms and decisions of the adjudication.
- Only those domestic and stock water rights that qualify as domestic and stock water uses under Idaho Code § 42-1401A (4) and (11) would be deferrable. **No other water uses can be deferred.**

Key Points of the Stipulation:

- The stipulation sets out the specific process should the need to adjudicate a deferred right arise in the future.

Benefit to having water right adjudicated

- IDWR can only administer decreed and licensed/permitted water rights.
 - Idaho Code, Section 42-607
- An unadjudicated beneficial use water right goes to the bottom of the priority list.
 - Nettleton v. Higginson, 98 Idaho 87 (1977).

Bottom line for deferred water rights

- Water users who want their deferred water rights administered will need to have their water right adjudicated first.

IDWR will be encouraging claims

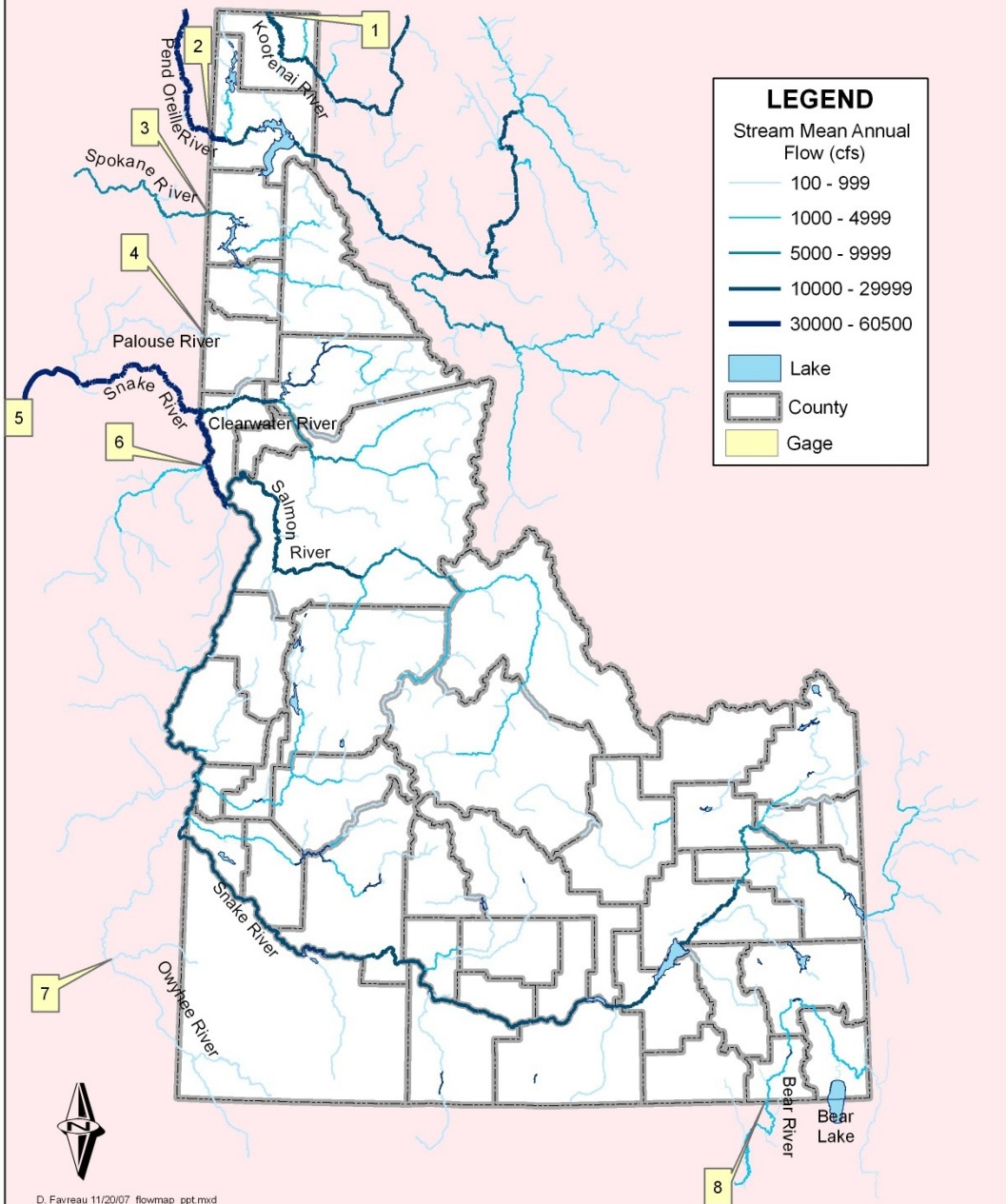
➤ IDWR will explain:

- If someone wants their deferred right administered or delivered in the future, they must get their water right decreed.
- Only costs \$25 now. Cost to get a water right adjudicated later will likely be much more expensive.
- If someone wants to change an element of a deferred water right through an administrative proceeding, they will first be required to have the water right decreed.

Why defer small domestic and stockwater rights?

- Consistent with the Snake River Basin Adjudication.
- Practical way to deal with small water rights that have very little impact on water system.
- By deferring the small domestic and stockwater rights, we save time and resources.
- Should the need arise for administration of a deferred water right, a path exists to adjudicate the right. Thus, we expend resources on the de minimis rights only when necessary.

Ave. Water Year Vol. Flowing From ID



Gage

1. Near Porthill, ID
11,153,000 AF
2. Albeni Falls Dam
17,633,000 AF
3. Near Post Falls, ID
4,475,000 AF
4. Near Potlach, ID
190,000 AF
5. Lower Granite Dam
34,850,725 AF
6. Near Anatone, WA
25,281,000 AF
7. Near Rome, OR
686,000 AF
8. ID-UT State Line
770,000 AF

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Water Data

- Surface water flow at Post Falls
 - 4,475,000 AFA
- USGS estimated groundwater pumpage from domestic supply wells from entire Rathdrum Prairie Aquifer (Idaho and Washington).
 - 20,270 AFA
 - .4%

State and Federal Relations

- State recognizes that federal government has heavy burden.
- Process to address issues.

State and Tribal Relations

- Three sovereigns with significant claims trying to work through process together.