



# **Bear River Basin Adjudication Background and Issues**

**Public Informational Meetings  
November 12 & 13, 2014**



**The Bear River originates and terminates in Utah, with reaches of the river flowing through Wyoming and Idaho.**

**Historically the Bear River and its surface tributaries have been managed to recognize the priority of rights in Idaho, and through the Bear River Compact, prior rights in Wyoming and Utah.**


**The Bear River and its surface tributaries are appropriated to the extent that flows are not adequate to fully satisfy all existing rights during all or part of every year.**

**The “Bear River Basin” in Idaho consists of Idaho Department of Water Resources’ (IDWR) Administrative Basins 11, 13, 15 and 17 in the southeast corner of the state, where the water ultimately flows from Idaho into Utah.**

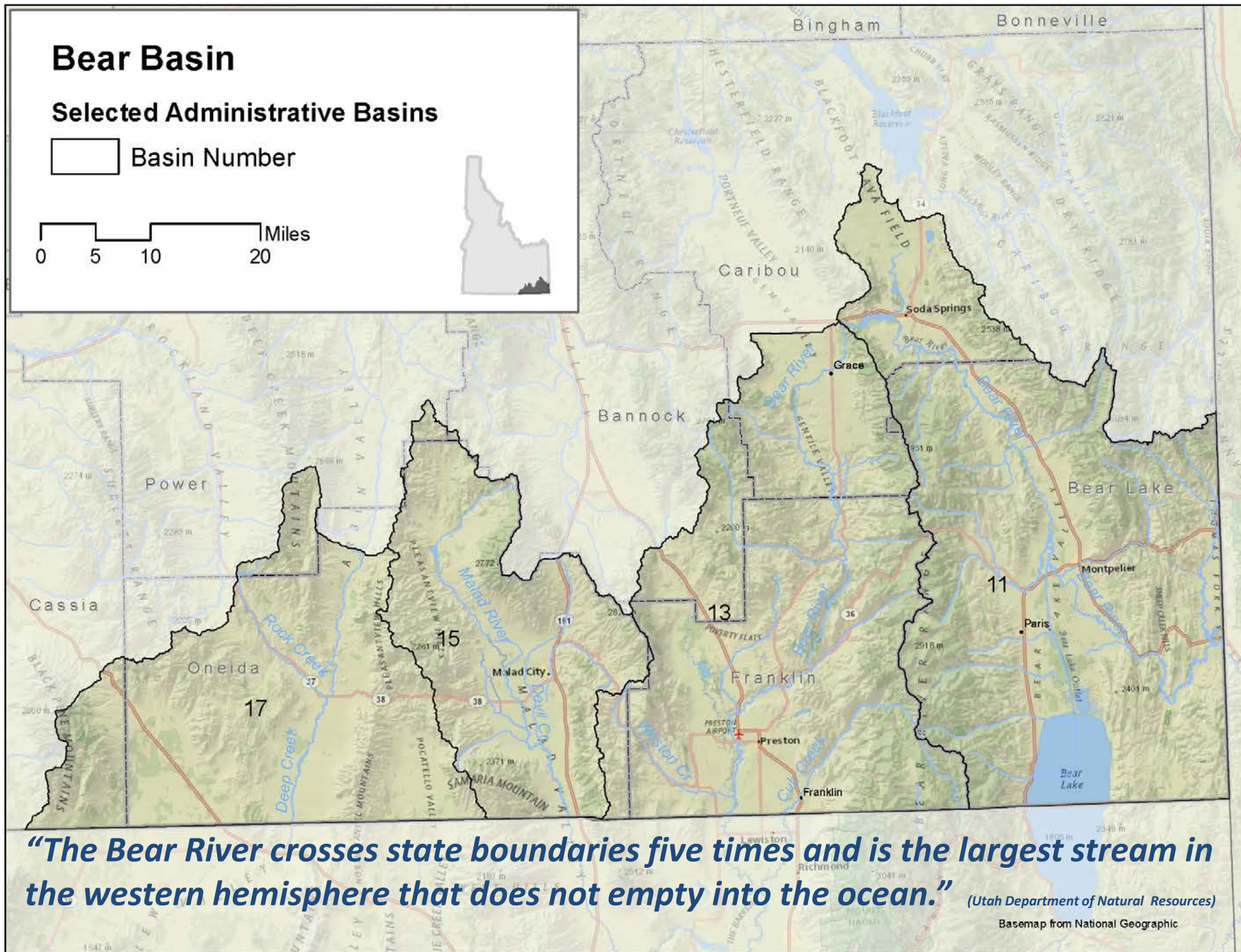


# Bear Basin

## Selected Administrative Basins

 Basin Number

0 5 10 20 Miles



## **Why is there a need for Idaho to adjudicate the water rights in the Bear River Basin?**

- **Many of the existing decreed or licensed water rights are not being used as described in the existing decrees or licenses.**
- **Many unrecorded beneficial use rights (“constitutional” or “grandfather” rights) probably exist in the basin.**
- **The “statutory claims” on record with IDWR have never been confirmed.**
- **The ownership of many of the water rights in the basin is not current. A water right that was recorded with a single owner now may have been split among multiple owners.**
- **Water in the basin is a limited resource. Supplies are not always sufficient to meet demands. All of the water rights must be determined (decreed) to administer the water!**

## What is the process?

- Legislation authorizing the adjudication is required.
- If the adjudication is authorized, the Idaho Supreme Court will appoint a district judge to preside over the adjudication.
- At the request of the Director of IDWR, the State of Idaho will petition the court to commence an adjudication of the water rights in the Bear River Basin.
- There will be a hearing on the petition, and the judge may issue an order to commence the adjudication. If the order is issued, IDWR will begin mailing commencement notices to all property owners in the basin. (the mailing will be done in phases)
- With the mailing of the commencement notices, the filing of the Notices of Claim to a Water Right (claims) begins.



## What is the process? (continued)

- IDWR will investigate the water use(s) described in each claim filed.
- After the investigation of the claims, IDWR will prepare and mail to each claimant a preliminary recommendation of their water right.
- IDWR will hold public meetings in the basin to meet with the water users (claimants) to discuss the recommendations of their water rights in an attempt to resolve any errors found in the recommendations. This is the Notice of Error phase.
- After the Notice of Error phase, IDWR will prepare Director's Reports in which a recommendation for each claim filed will be sent to the court.

## What is the process? (continued)

- Once a Director's Report is filed there will be a period of time to file an objection. Anyone who feels their water use might be adversely impacted by IDWR's recommendation should file an objection.
- If a recommendation/subcase is objected to, there is a period of time in which responses to that objection may be filed.
- After the deadline for filing responses, the court sets an initial hearing date. However, efforts to settle the objection can begin at any time in the process. If a settlement is not reached by the initial hearing date, the court may order a mandatory settlement conference that can be moderated. (one of the special masters usually serves as the moderator)

## What is the process? (continued)

- If the objection to the recommendation/subcase cannot be resolved, the court will schedule a trial.
- If a recommendation/subcase is not objected to, there will be an uncontested hearing. The uncontested hearing is after the response deadline for the Director's Reports in each of IDWR's administrative basins.
- Water rights without objections will generally be decreed as recommended.
- While many of the Notices of Claims to a Water Right will be recommended as claimed, some will be recommended with modified elements, and some may even be disallowed. You must be sure to follow the progress of your claim through the process. Be sure to read notices from the court and IDWR!



## **Frequently Asked Questions**

### **How long will the Bear River Basin Adjudication take?**

**IDWR estimates the Bear River Basin Adjudication will take between 5-10 years to complete. IDWR also estimates that the number of claims to be filed in the Bear River Basin Adjudication will be 14,000 to 20,000.**

**The Snake River Basin Adjudication (SRBA), which resulted in nearly 160,000 water rights being decreed, took roughly 27 years to complete. It should be noted that, at the commencement of the SRBA, the state of Idaho had never undertaken such a large adjudication. The first years of the SRBA were spent litigating test cases to establish the rules and standards used to review water rights in an adjudication. Most of those issues have been settled and decided and may not have to be revisited in a Bear River Basin Adjudication.**

## Frequently Asked Questions (continued)

### What will be the cost of filing a claim in the Bear River Basin Adjudication?

**IDWR expects the filing fees to be similar to those in the SRBA. Actual costs will be established in the legislation authorizing the adjudication. The filing fee for small Domestic and/or Stock claims was \$25.00. All other claims had a flat filing fee of \$50.00, plus a variable fee. The current variable fee schedule is shown below:**

Irrigation: . . . . .	\$1.00 per acre, each acre is charged only once.
Power generation: . . . . .	\$3.50 per kilowatt of capacity , or \$250,000.00, whichever is less. (based on manufacturer's nameplate rating)
Aquaculture: . . . . .	\$10.00 per cfs
Domestic, stockwater in excess of 13,000 gallons per day: . . . .	\$100.00 per cfs
Municipal, industrial, commercial, mining, heating, cooling: . . .	\$100.00 per cfs
Public instream flow, lake level maintenance or wildlife: . . . .	\$100.00 per cfs

**Exceptions:** No variable fee is charged for fire protection or ground water recharge.

## **Frequently Asked Questions (continued)**

### **What kind of documentation will I need to file my claim?**

**If your water right is described in a prior decree or license, you will need to provide information about how and where the water right is used today. If the water right was not described in a prior decree or license, you will need to supply evidence of priority date, capacity of the system, and extent of beneficial use. Priority date can be supported by public records, journal entries, historic deeds, homestead patents, affidavits, and other documents.**



## **Frequently Asked Questions (continued)**

### **Will the state or the Department take away my water rights?**

**Within an adjudication, a water user bears the burden of establishing his water right. For previously unperfected rights (“beneficial use rights”), water users must provide evidence of priority date, diversion rate, and extent of beneficial use. The Court decrees water rights based on the evidence provided.**

### **What about unrecorded changes to my water rights?**

**IDWR expects the legislation authorizing the adjudication will allow for accomplished transfers (unrecorded changes to the water right) and even enlargements in water use, similar to what was allowed in the SRBA.**

## **Frequently Asked Questions (continued)**

### **Will the State of Utah object to my water rights?**

**No, Utah does not have standing to participate as an objector in an Idaho adjudication.**

### **Will PacifiCorp/Rocky Mountain Power object to my water rights?**

**Possibly, PacifiCorp would have the ability to object to water rights in the Bear River Basin Adjudication.**

**However, it should be noted that only a small fraction of claims filed in the SRBA were objected to. The vast majority of SRBA claims were filed, reviewed, recommended and decreed without objection.**

## **Frequently Asked Questions (continued)**

### **Will I have to hire an attorney to file my claims?**

**Legal representation is not required to file an adjudication claim. Some water users chose to use an attorney to file claims in the SRBA, many did not. IDWR plans to open an office somewhere in the Bear River Basin during the duration of the adjudication. Staff will be available to assist water users in preparing their claims.**



## **Frequently Asked Questions (continued)**

**If I receive water from a canal company, do I have to file a claim for a water right?**

**If the canal company is the owner of the water right, the company is responsible for filing the claim.**

**However, some canal companies deliver water rights owned by individuals. It is always best to check with the canal company to make sure the water that you use will be claimed by the canal company.**

## **Frequently Asked Questions (continued)**

### **Will an adjudication include non-irrigation rights?**

**Yes, an adjudication will cover all water rights within the designated basins. Hydropower water rights, municipal systems, commercial, and industrial water uses must all be claimed in an adjudication.**

**However, the legislation that authorizes the adjudication may include language that requests domestic and small stock water users be allowed to defer the filing of claims.**

**(often referred to as a de minimis uses)**

## **Frequently Asked Questions (continued)**

**Does the United States have to participate in the adjudication?**

**Yes, the United States will be required to participate, and the federal agencies will likely file claims for all water uses on federal land. In addition, the U.S. Fish and Wildlife Service may file claims describing all of the water used within the Bear Lake National Wildlife Refuge.**





**Thank you for attending this public informational meeting.**  
**As more information becomes available, IDWR will update its website**  
[http://www.idwr.idaho.gov/WaterManagement/Bear\\_River\\_Basin\\_Adjudication](http://www.idwr.idaho.gov/WaterManagement/Bear_River_Basin_Adjudication)