Adjudication and the Kootenai River Basin

"Adjudication serves a noble purpose. It lets people of Idaho know just what they own. Everything from farming to fishing to mining and manufacturing requires water. Each of these will go smoothly now that they know what they own."

What is an Adjudication

- Idaho Code § 42-1406B:
  “Effective management of the waters of northern Idaho requires that a comprehensive determination of the nature, extent and priority of the rights of users of surface and ground water be determined.”

- Purpose: Catalog and confirm through District Court all water rights in a particular river basin (i.e., Kootenai River Basin), including surface and ground water.

- Analogies:
  - Car Title
  - Property Deed
Northern Idaho Adjudication (NIA) - Timeline

Ph. 1 (CSRBA) Commences
Nov. 12, 2008

2006

NIA Authorization
ID Legislature enacts NIA Statutes § 42-1406B

2007

NIA Statutes Amended
SB 1418; SB 1352; and SB 1354

2008

Ph. 1 (CSRBA) Commences
Nov. 12, 2008

Ph. 2 (PRBA) Commences
March 1, 2017

Basin 92 Recommend.
Feb. 2015

Basin 93 Recommend.
Feb. 2015

2009

Basin 91 Recommend.
Dec. 2014

Basin 92 & 93 Recommend.
Basin 92 Dec. 2014
Basin 93 Mar. 2014

2010

Ph. 2 (PRBA) Commences
March 1, 2017

Basin 94 Recommend.
Feb. 2016

Basin 94 Recommend.
Feb. 2016

2011

Basin 95, Part 1 Rec.
Aug. 2018

2012

Basin 95, Part 2 Recommendation
Feb. 2019

PRBA Claims Taking
Apr. 2019

2013

Commence CFPRBA
~Fall 2020

CFPRBA Claims Taking
~July 1, 2021

2014

Basin 95, Part 2 Recommendation
Feb. 2019

PRBA Claims Taking
Apr. 2019

2015

Commence CFPRBA
~Fall 2020

CFPRBA Claims Taking
~July 1, 2021

2016

Ph. 3 (CFPRBA) Funding Authorization
2020 Leg. Session
2008 Leg. Session, SB #1418
Why was the Kootenai Removed from the NIA?

- Fairness
- Domestic Meters and Fees
- Constitution
- Abundancy of Water
- Trust
- Canada
- Science
Fairness: Snake R. Basin vs. Northern Idaho

Claim Filing Fees – SB No. 1352
- Amended fees to match SRBA domestic filing fees and cap hydro-power claim filing fees at $250K

Domestic Defferals – SB No. 1354
- Allowed “deferral” of domestic and stockwater uses similar to the SRBA
- Water users can choose to defer (postpone) filing for small surface water and ground water domestic and uses.
  - ≤13,000 gallons/day
  - Dfn: Idaho Code, 42-111
Domestic Use: Meters and User Fees

- **Water Districts – Who Participates?**
  - Participation is decided by the district Advisory Committee.
  - Assessments are set by the district Advisory Committee.
  - Domestic Ground Water Uses are **Excluded**.

- **Measurement Orders – Who Measures?**
  - Domestic Ground Water and Surface Water are **excluded**.
  - All uses ≤ 5 acres or ≤ 0.24 cfs (108 gpm) are **excluded**.

- **Meters on Domestic Well?**
  - Administration of domestic ground water uses in the Kootenai Basin would be **without precedent**.
  - **Unfair** to regulate domestic ground water right holders.
  - The metering of domestic wells is **not on the horizon!**
How to Legally Divert and Use Water

- **Constitution** (Article XV – Water Rights)
- **Beneficial Use Water Right** (AKA Constitutional WR)
- **Mandatory Permit/License** (§ 42-229; §§ 42-103, 201)
- **Mandatory Statutory Claims** (§§ 42-243, 244)
- **Administering a Claim vs. Permit/License vs. Decree** (§ 42-607)
Abundancy or Sufficiency of Water Supply

Percent of Total IDWR Records
(Total: 928 records*)

- Kootenai & Moyie R.: 28%
- Streams: 41%
- Multiple Sources: 5%
- Ponds/Lakes/Sloughs: 2%
- Groundwater: 23%
- Spring(s): 1%

*Records include decrees, licenses, statutory claims, and permits.
Other Concerns from 2008

- Trust in the Department and the process
  - Is there still a lack of trust today?

- Concerns over Canada
  - Water Right Adjudication
  - Columbia River Treaty Negotiations

- The state of the science
  - Stable Admin. Basins
  - Rathdrum Prairie Aquifer
The Benefits of an Adjudication

- Protection against competition for finite resources
  - Supplies are not always sufficient to meet demands
  - During times of scarcity Idaho relies on priority administration

- North Idaho population projected to grow 19.5% by 2026*
  - Increasing population represents increasing competition for finite resources

- Confirm Private Property Rights
  - Only way to confirm Statutory Claims
  - Record and confirm beneficial use rights
  - Record changes to water rights

Practical Considerations

*Population growth forecast obtained from the Idaho Department of Labor.
Questions and Comments.
(www.idwr.idaho.gov)