

Clark Fork-Pend Oreille River Basin Adjudication

Shelley Keen of Idaho Dept. of Water Resources

April 28, 2022



Meeting Topics



- What is a water right?
- Reasons for an adjudication
- Progress of the Clark Fork-Pend Oreille River Basin
- How can I file a water right claim?
- What about domestic water rights?
- Questions

Idaho Constitution

Article XV, Section 3:

- “The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes.”
- “Priority of appropriation shall give the better right as between those using the water.”

Nature of Property in Water

Idaho Code § 42-101:

“All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose”

“The right to the use of any of the waters of the state for useful or beneficial purposes is recognized and confirmed; and the right to the use of any of the public waters . . . shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied.”



What is a Water Right?

A water right is a right to use the State's water. A water right entitles a person, company, or organization to divert water from a natural source for a defined beneficial purpose. The right is a property right; it is appurtenant to the land where it's used.

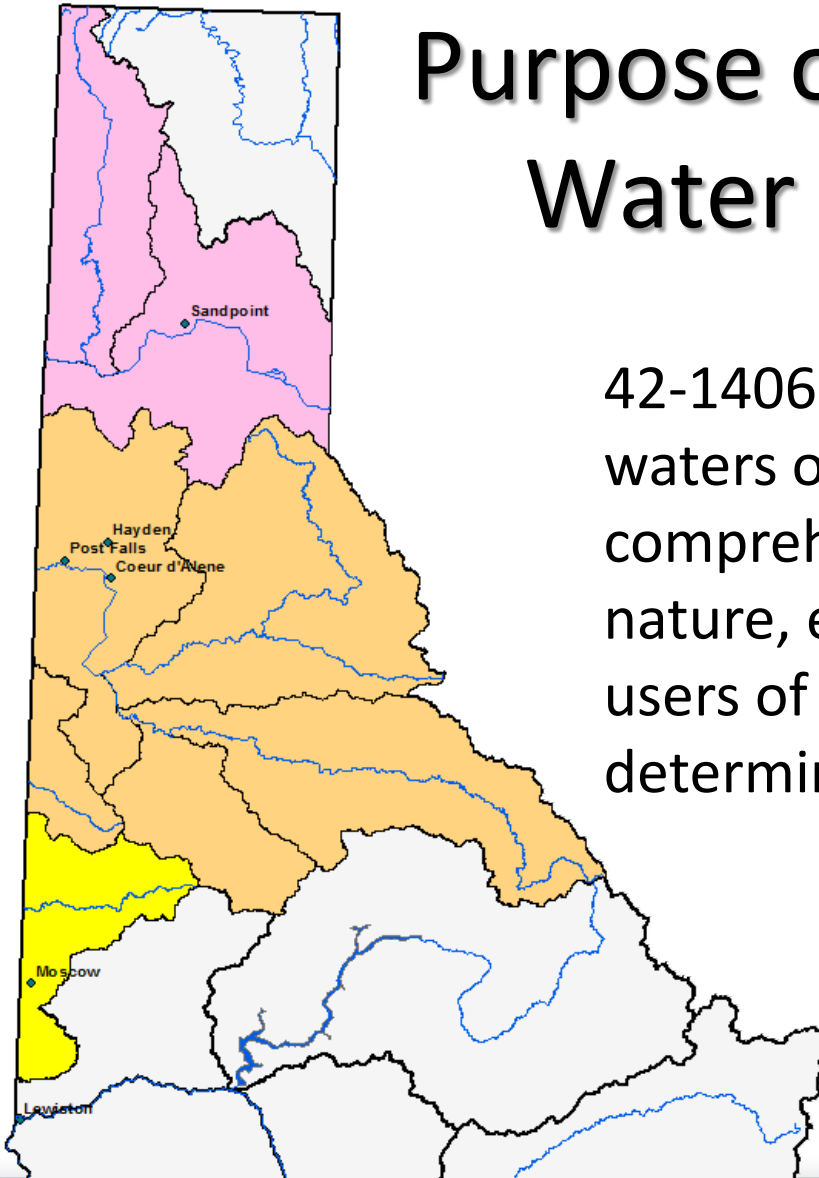
What is a Priority Date?

Because water is scarce at times across most of Idaho, there has to be a way to decide who gets water when there isn't enough for everyone. Every water right comes with a priority date indicating when the beneficial use was established.

Older "senior" water rights get all their water before newer "junior" water rights get any. Thus, first in time is first in right.

Purpose of the Northern Idaho Water Rights Adjudications

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.”



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
- ◆ Confirm Private Property Rights
- ◆ North Idaho population growth continues
- ◆ Only way to confirm Statutory Claims
- ◆ Record and confirm beneficial use rights
- ◆ Record changes to water rights



2009 APR 03 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-19013

NAME AND ADDRESS: CITY OF BOISE
DEPT OF AVIATION & PUBLIC
TRANSPORTATION
PO BOX 500
BOISE, ID 83701

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under this right for domestic and
stockwater uses shall not exceed 13,000 gallons per day.

PRIORITY DATE: 12/31/1959

POINT OF DIVERSION: TWIN R02E S19 SEWSE Within Ada County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE Domestic	PERIOD OF USE 01-01 TO 12-31	QUANTITY 0.04 CFS
-------------------------------	----------------------------	---------------------------------	----------------------

PLACE OF USE: Domestic Within Ada County
TWIN R02E S19 NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right is not a
determination of historical beneficial use.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412 (6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is NO just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

What do I get in the end?

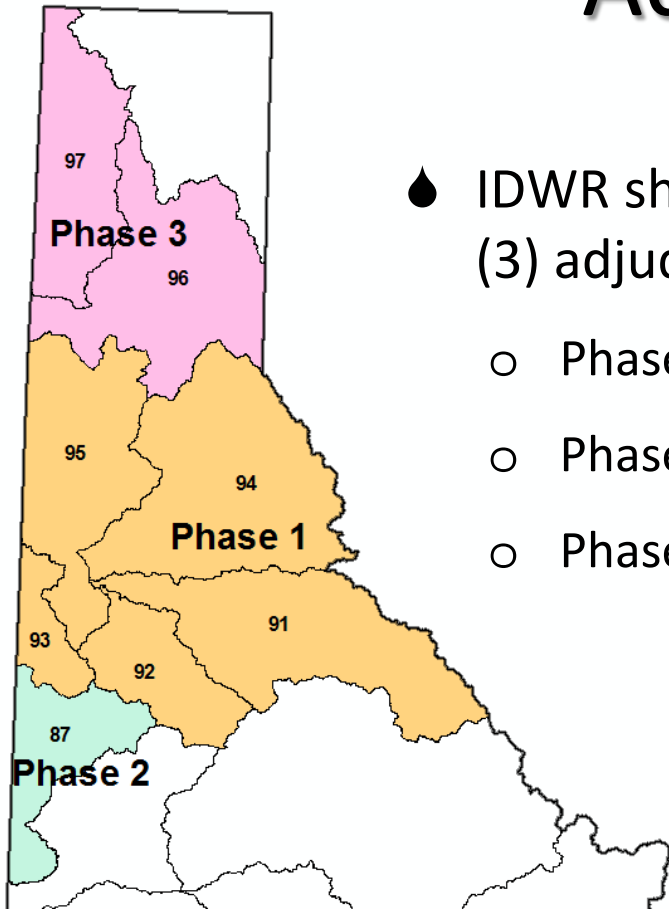


**“There is no
substitute for a great
water right.”**

Colorado Supreme Court
Justice Gregory Hobbs at
*Understanding the SRBA
Resolution*, August 25,
2014



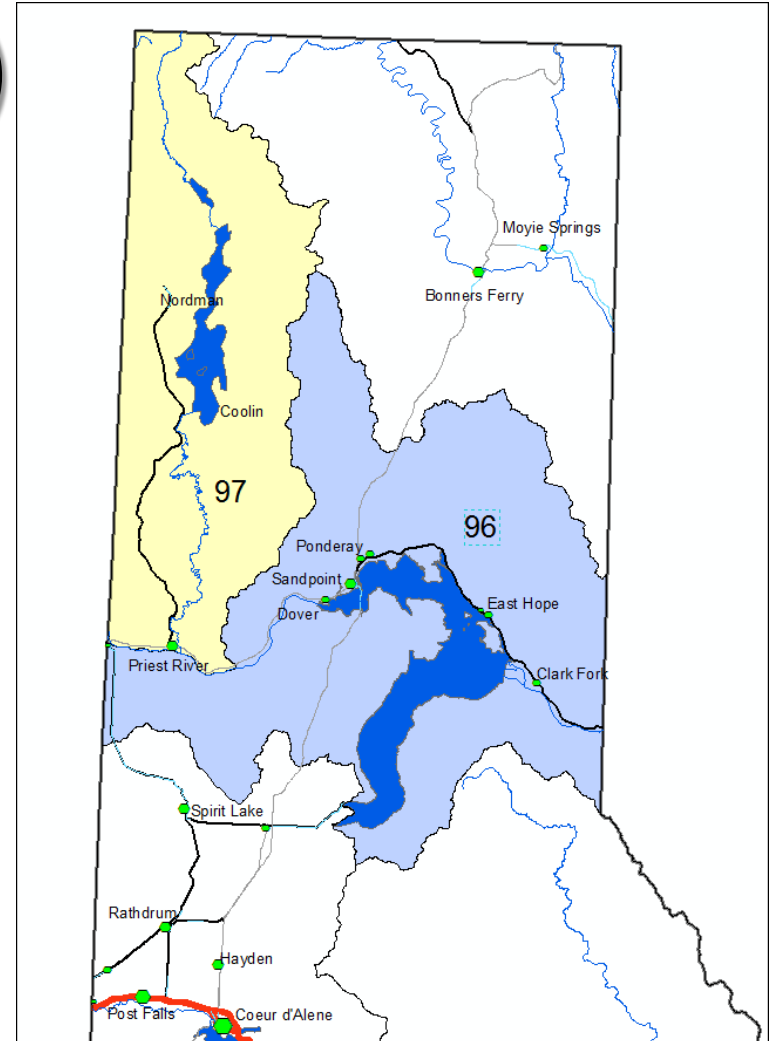
42-1406B. Northern Idaho Water Rights Adjudications



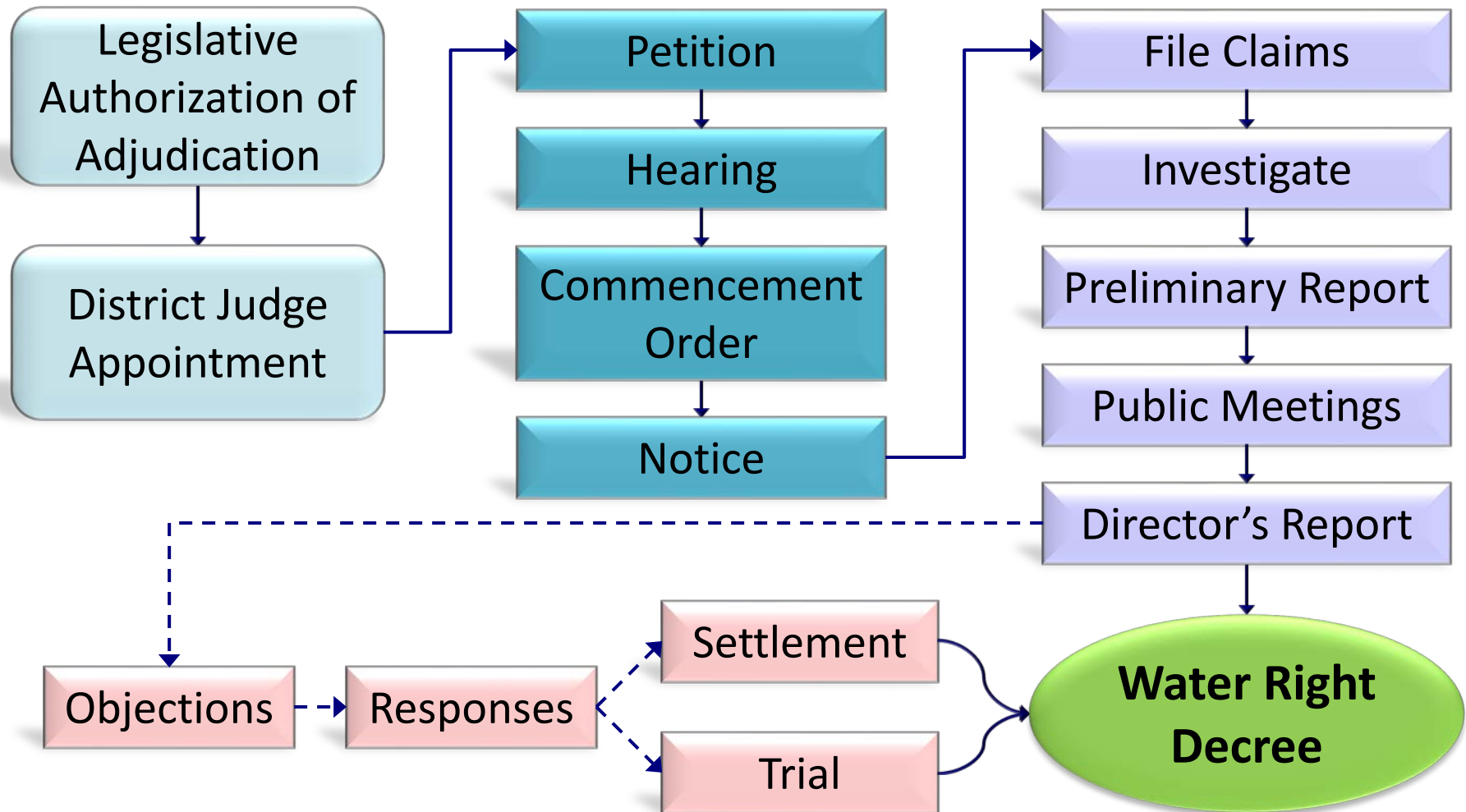
- IDWR shall petition the district court to initiate three (3) adjudications within the:
 - Phase 1 - Coeur d'Alene-Spokane River Basin (CSRBA)
 - Phase 2 – Palouse River Basin (PRBA)
 - Phase 3 – Clark Fork-Pend Oreille River Basin (CFPRBA)

Clark Fork-Pend Oreille River Basin Adjudication (CFPRBA)

- Funding authorized by the 2020 Legislature
- Commencement Order issued by District Court on June 14, 2021



Adjudication Process



Commencement Notice

IMPORTANT WATER RIGHTS INFORMATION

YOUR FILING DEADLINE IS: October 28, 2022

**FAILURE TO FILE A REQUIRED NOTICE OF CLAIM WILL RESULT IN A
DETERMINATION BY THE COURT THAT THE WATER RIGHT NO LONGER EXISTS.**

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re: The General Adjudication of)
Rights to the Use of Water from the)
Clark Fork-Pend Oreille River)
Basins Water System.)

Civil No. 00-69576

**COMMENCEMENT
NOTICE**

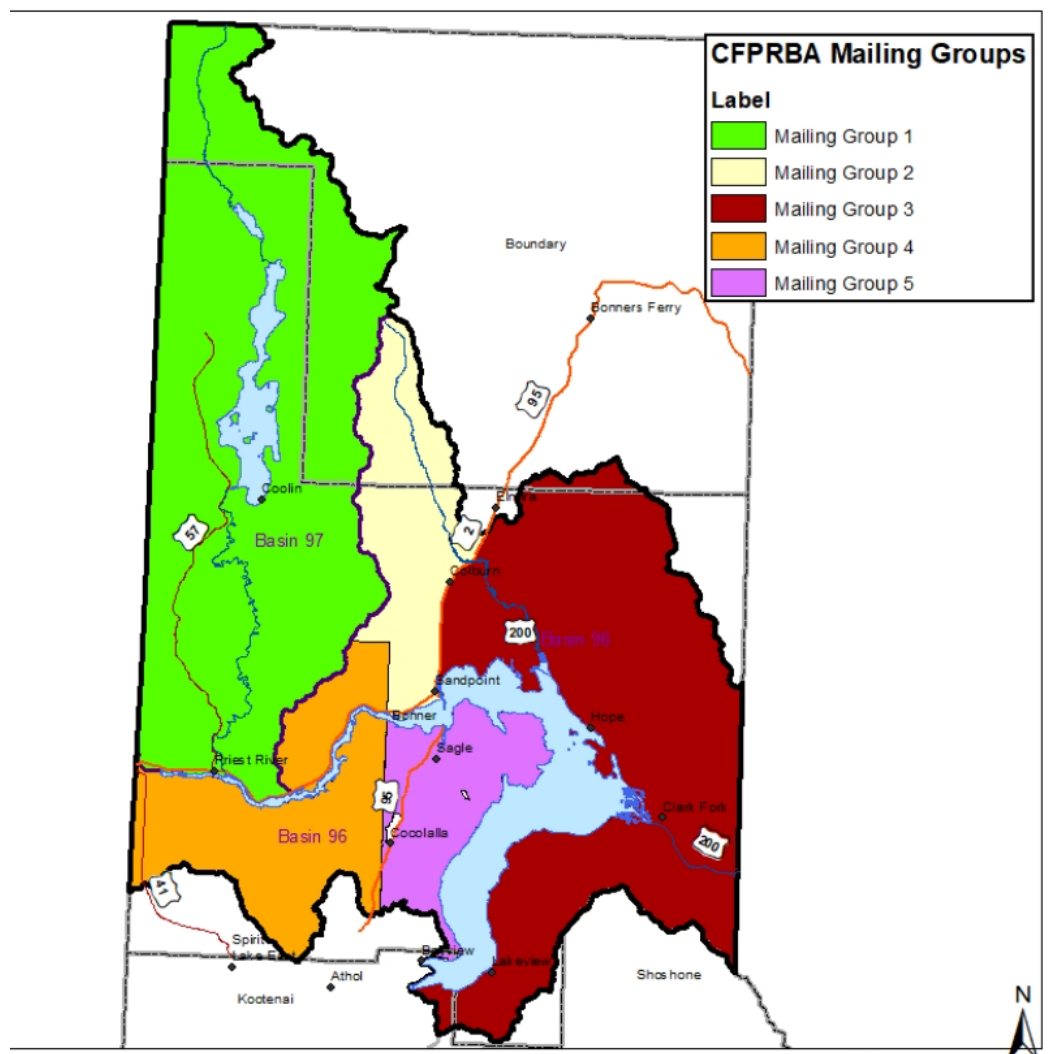
) Property Owners within Bonner, Boundary, and
) Kootenai Counties within IDWR's Administrative
) Basin 96
)

**TO: ALL PERSONS OWNING RIGHTS TO THE USE OF WATER WITHIN THE
CLARK FORK-PEND OREILLE RIVER BASINS WATER SYSTEM**

YOU ARE HEREBY NOTIFIED THAT:

On June 15, 2021, the Fifth Judicial District Court in and for the County of Twin Falls issued an

Commencement Notice Mailing Groups



How can I file a claim?

- Next week, May 3-5 IDWR staff members will be at the Ponderay Events Center (Sandpoint) from 8:00 to 6:00 each day.
- File online at:
<https://research.idwr.idaho.gov/apps/Adjudication/OcLogin>
- Print a paper claim at: <https://idwr.idaho.gov/water-rights/adjudication/nia/cfprba/>
- Meet with an IDWR staffer in the Coeur d'Alene office: Call 208-762-2800 for an appointment

Domestic Use



- ◆ Domestic Deferral
 - Water users can choose to defer (postpone) filing for small Domestic & Stockwater rights (I.C. § 42-111)
 - However, filing fees for deferrable domestic and/or Stockwater claims are \$25.
- ◆ Meters on Domestic wells?
 - The administration and metering of domestic wells is not on the horizon.

How the CFPRBA will Affect Water Right Holders

- ◆ All water uses in the adjudicated areas, except for small domestic and/or stockwater, must be recorded.
 - Municipalities and municipal providers are responsible for filing their claims.
 - Water users can choose to defer (postpone) filing for small Domestic & Stockwater (42-111) rights
- ◆ The CFPRBA Court will issue a “partial decree” for each claim that appears in the Director’s Report.
- ◆ Delivery of water (if or when required) will be based on the partial decree for each right.

"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."

Unites States Supreme Court Justice Antonin Scalia, 2014



Questions?



Shelley Keen
Water Allocation Bureau Chief
Idaho Dept. of Water Resources
shelley.keen@idwr.idaho.gov
208-287-4947

Thank you