

Comparison of Montana and Idaho Water Law

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Comparison Outline

State: IDAHO

Water Adjudication

Date adjudication started: November 19, 1987

Type of adjudication (i.e. statewide, basin, etc):

The adjudication is a McCarran Amendment adjudication -- meaning it involves the U.S. Government. Currently Idaho is only adjudicating the Snake River Basin. Even though it is only one basin, the basin covers 87% of Idaho. Idaho's adjudication includes both surface water and ground water.

Dollars spent to date:

\$60 Million has been spent by the state. They estimate the final cost to be around \$80 million. The examination and recommendations of state-based water rights that is completed by the Idaho Department of Water Resources (IDWR) is estimated to be completed by December 31, 2005. The court process is estimated to be completed and all decrees final by 2008-2010.

of claims filed/# of claims completed:

170,000 claims were filed. In Idaho, beneficial uses with the same priority date could all be submitted on the same claim. In Montana, each beneficial use had to have its own claim.

IDWR has made Director's Reports on 121,650 claims. Of those 121,650 claims, 105,193 have been decreed. There are approximately 23,000 claims that still require Director's Report recommendations. There were about 25,000 claims that were withdrawn by the claimant or found to be invalid.

Accurate defined:

Accuracy is not defined in Idaho statute. Idaho feels that there is a compromise between accuracy and efficiency. Claims filed in Idaho do not have a "prima facie" standing. Once IDWR files the Director's Report, then the information is considered "prima facie" and it is the responsibility of the objector to provide enough evidence to overcome the standard. Generally, if there is no objection to the Director's Report on a particular subcase (water right) then the water court issues a decree consistent with the Director's recommendations.

Policies in place to ensure accuracy:

There are no statutory policies to ensure accuracy. However, the state has developed a manual for use by the field agents to try to ensure consistency across sub-basins. There

have also been adjudication memos produced regarding certain questions that have been compiled into a searchable database so that field agents can access those memos to answer certain questions they might have.

Court challenges to the adjudication and associated citations:

Federal/Indian Reserved Rights

completed/# yet to complete: Idaho has 3 tribes left that have not reached agreement on all issues.

Process (negotiation, litigation, etc.): Idaho enters into negotiations with the help of an outside mediator. The mediator is from an out-of-state University and has had fairly good results. The parties include the tribe, the Attorney General's Office, water users groups, Idaho Power Company, and the United States. The Federal reserved right claimant must prove up every element of the water right. IDWR is involved in the trial to the extent that scientific information is needed.

Enforcement process:

The water adjudication in Idaho is a basic building block for the enforcement process. Enforcement is handled through the IDWR rather than through the district courts.

Water Storage and Distribution Policy

Ownership of facilities:

Idaho only has 1 state-owned facility.

Are new facilities being built -- if so, where (on stream vs. off stream)

No. After the Teton Dam failed in 1976 and there were significant losses associated with the failure, Idaho has not constructed any more facilities.

Water Banking

Addressed in statute:

Water Banking is addressed in Title 42, chapter 17.

What are the provisions:

Water banking has been used in Idaho for decades. There are two different kinds.

Storage: This method is very active. It is used for both consumptive uses and for instream flow purposes. The federal government purchases water from this bank as well as irrigators in years of drought.

Other: This method has not been very active. It is estimated that this bank will have more use and activity in the future.

If water is banked, it is a safe haven for the water rights. The rights can not be forfeited if the associated water has been put in a bank.

Surface Water/Ground Water connectivity

Addressed in statute:

Title 42, chapter 2.

Are there closed basins:

Idaho has statutes like those in Montana law that state a certain area is closed. In Idaho, these areas are called critical ground water areas.

Are the policies statewide:

Yes, in statute, there is no distinction between surface water and ground water. It is assumed that it is connected. The extent of the connectivity and the timing of the water use is handled administratively and is not in statute. The burden of proof lies with the injured party to prove the level of hydrologic connectivity.

Are policies restricted to closed basins:

No.

Pertinent Web Addresses:

www.srba.state.id.us (Snake River Basin Adjudication Information -- Court)

www.idwr.state.id.us (Idaho Department of Water Resources Information)

Information provided by:

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