

Idaho Water Rights Adjudications

The Spokane River Forum Conference
November 15, 2017

Candice M. McHugh

Why Adjudicate Water Rights?

- Security
- Predictability
- Administration

Types of Adjudications in Idaho

- Private adjudication
 - Idaho Code § 42-1404
- General stream adjudication
 - Idaho Code §§ 42-1405-1408

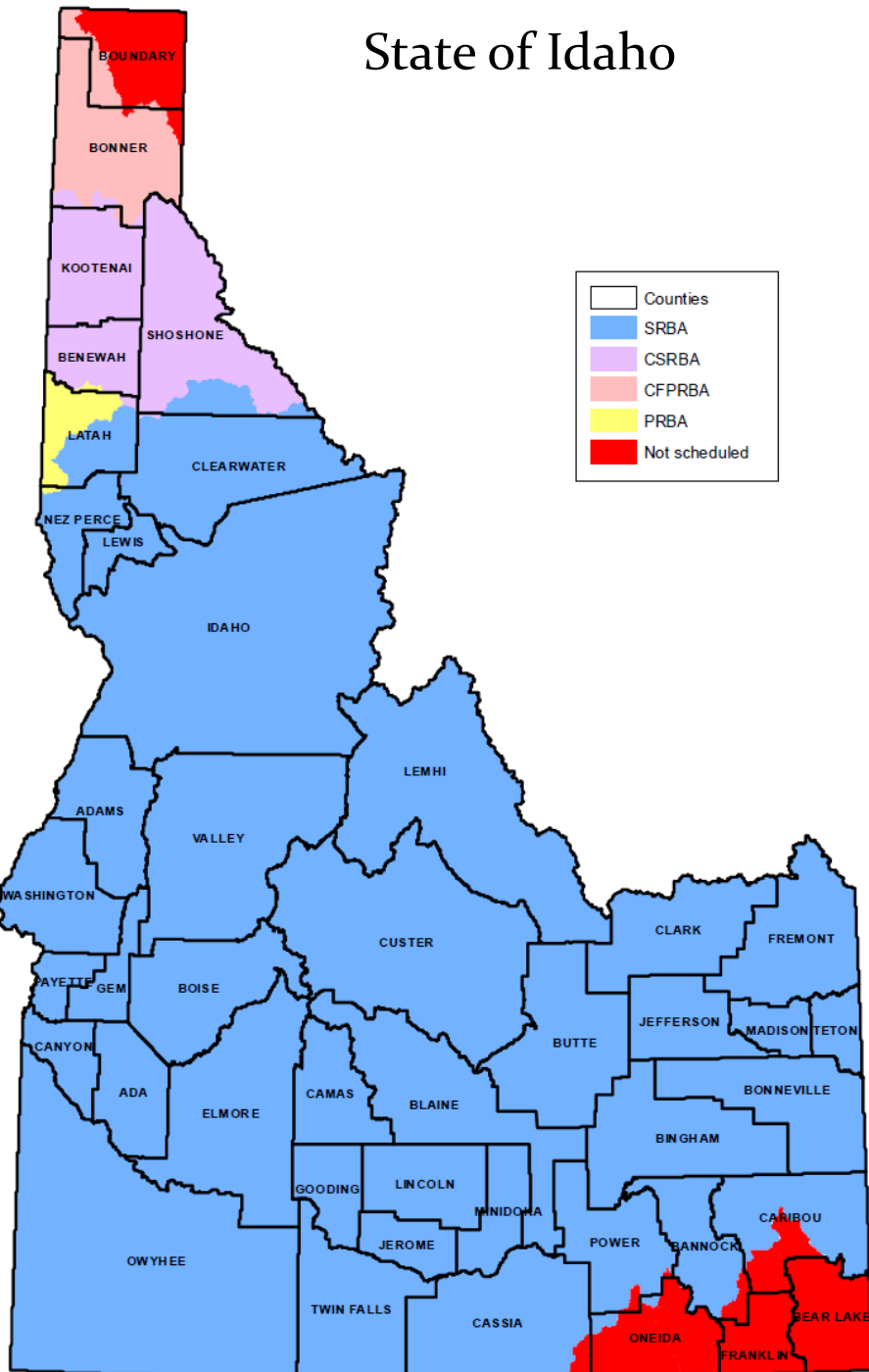
Idaho's Adjudication Court

www.srba.state.id.us

- District Court Judge
 - Eric Wildman
- Special Masters
 - Brigitte Bilyeu
 - Terrance (Terry) Dolan
 - Theodore (Ted) Booth
- Staff
 - Diana Delaney – Case Administrator
 - Janet Connell – Deputy Clerk and Assistant to Special Masters
 - Julie Murphy – Deputy Clerk
 - Paul Harrington – Staff Attorney



State of Idaho



General Adjudications in Idaho

Snake River Basin Adjudication

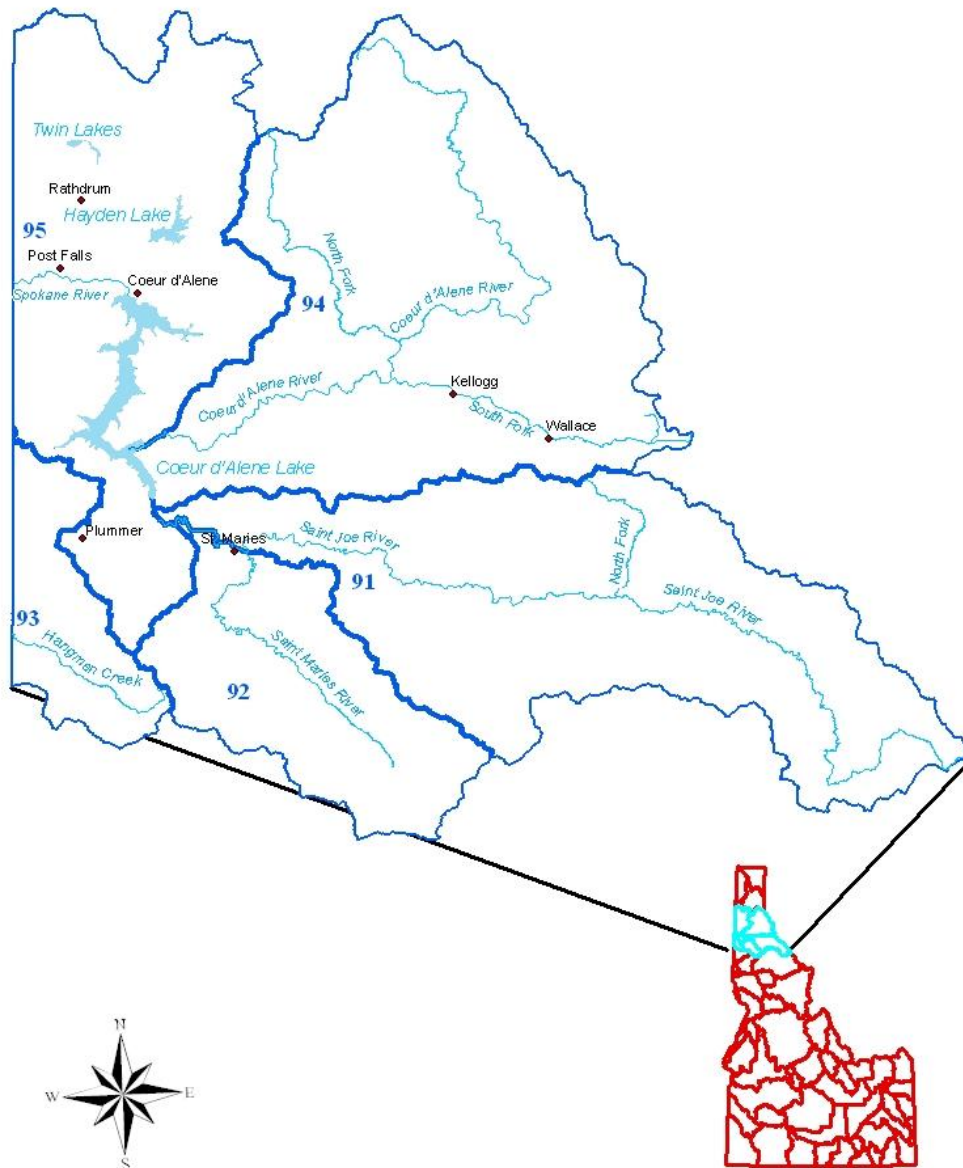
- Final Unified Decree – Signed August 25, 2014
 - 158,693 decrees
- Idaho Code § 42-1413
 - Filed in each SRBA county recorder's office
 - Will direct public to IDWR for current status
- Summary Supplemental Adjudication
 - Idaho Code § 42-1424



Northern Idaho Adjudication (NIA)

- Proceeding as a general adjudication
 - Idaho Code § 42-1406B(1)
- Jurisdiction is with the Fifth Judicial District Court in Twin Falls (SRBA District Court)
 - Idaho Code § 42-1406B(2)

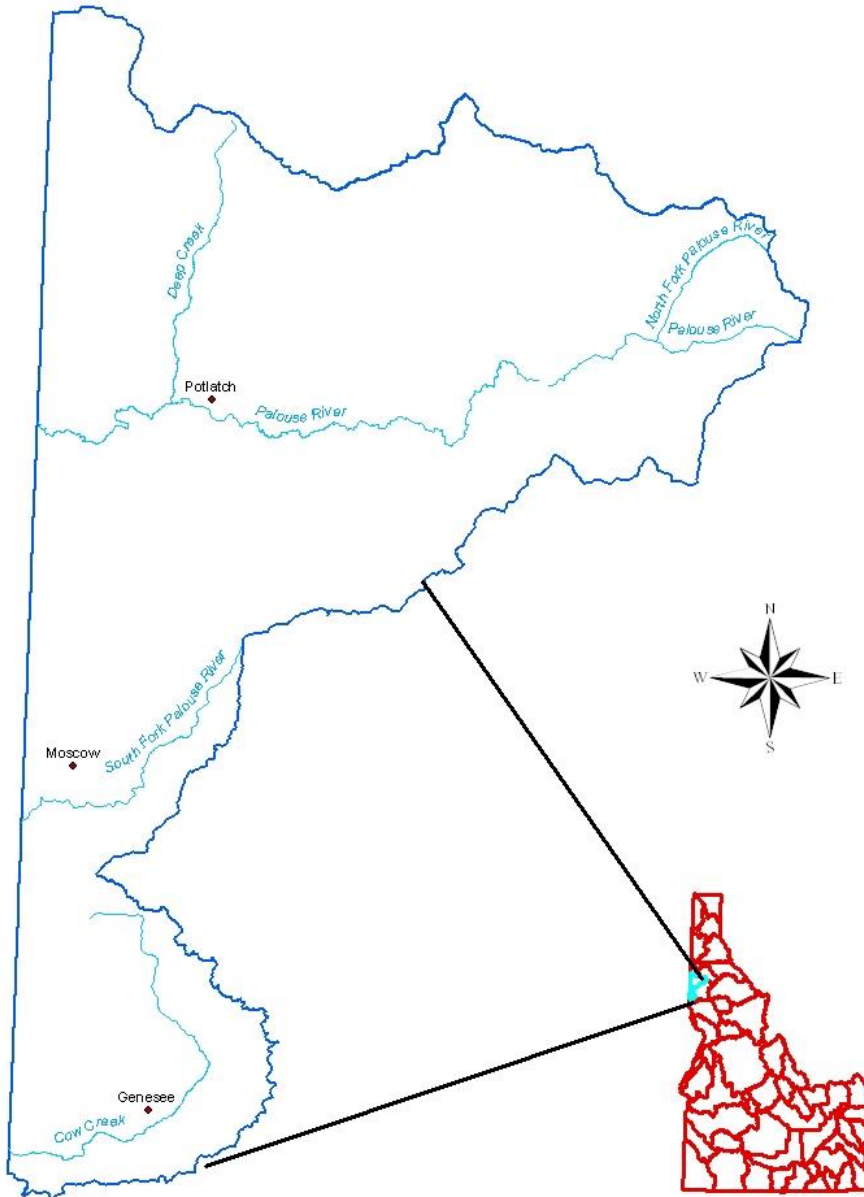
Basins 91 - 95 - Couer d'Alene and Spokane River Basins



NIA Phase 1 (CSRBA)

Commenced Nov. 12, 2008
Basin 95 to be reported
early 2018

Basin 87 - Palouse River and Tributaries

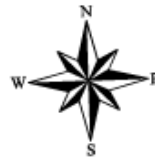
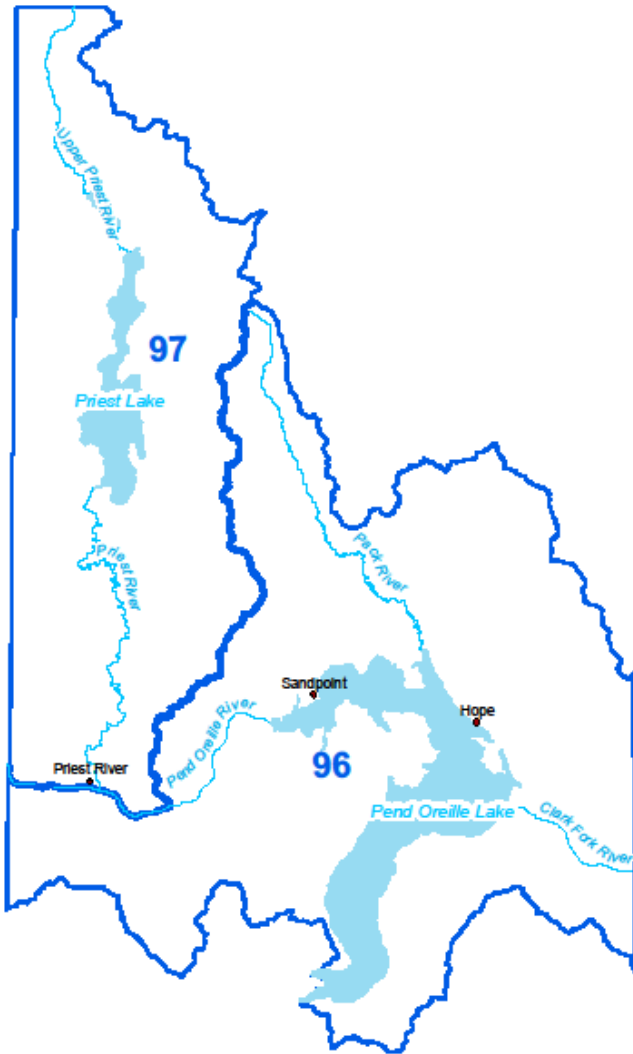


NIA Phase 2 (PRBA)

Commencement January 2017
Claims Taking Expected
at the end of 2018

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Basins 96 & 97 - Clark Fork and Pend Oreille River Basins



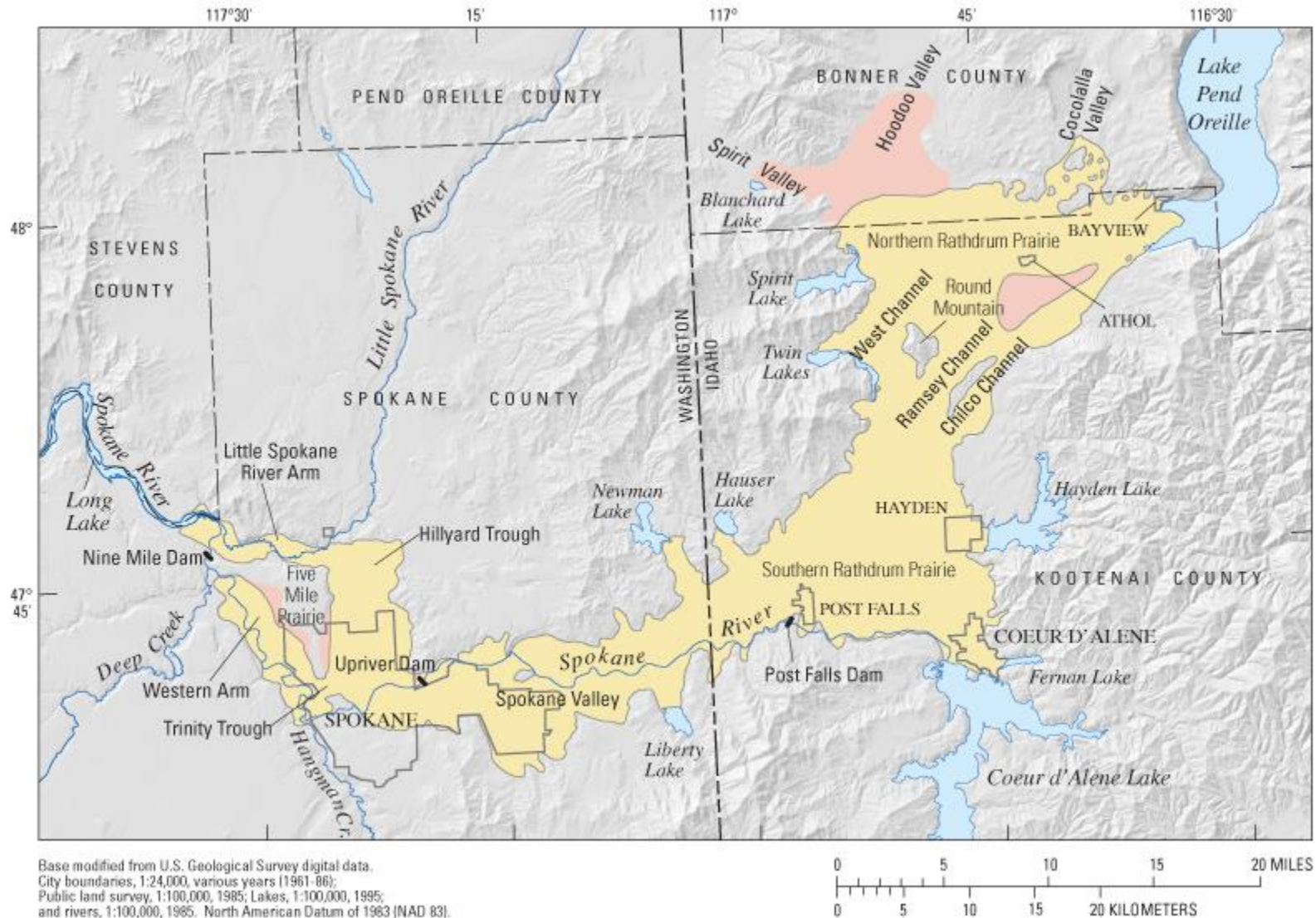
NIA Phase 3 (CFPRBA)

Likely will not commence

NIA Participation and Deferment

- Who must participate?
 - State water users, Federal government, Tribes
- Who may defer?
 - Domestic and stockwater users
 - Idaho Code § 42-1406B(1)
 - Defer at your own risk
- Three phases

Why is the CSRBA Important?



Spokane Valley- Rathdrum Prairie Aquifer Water Budget

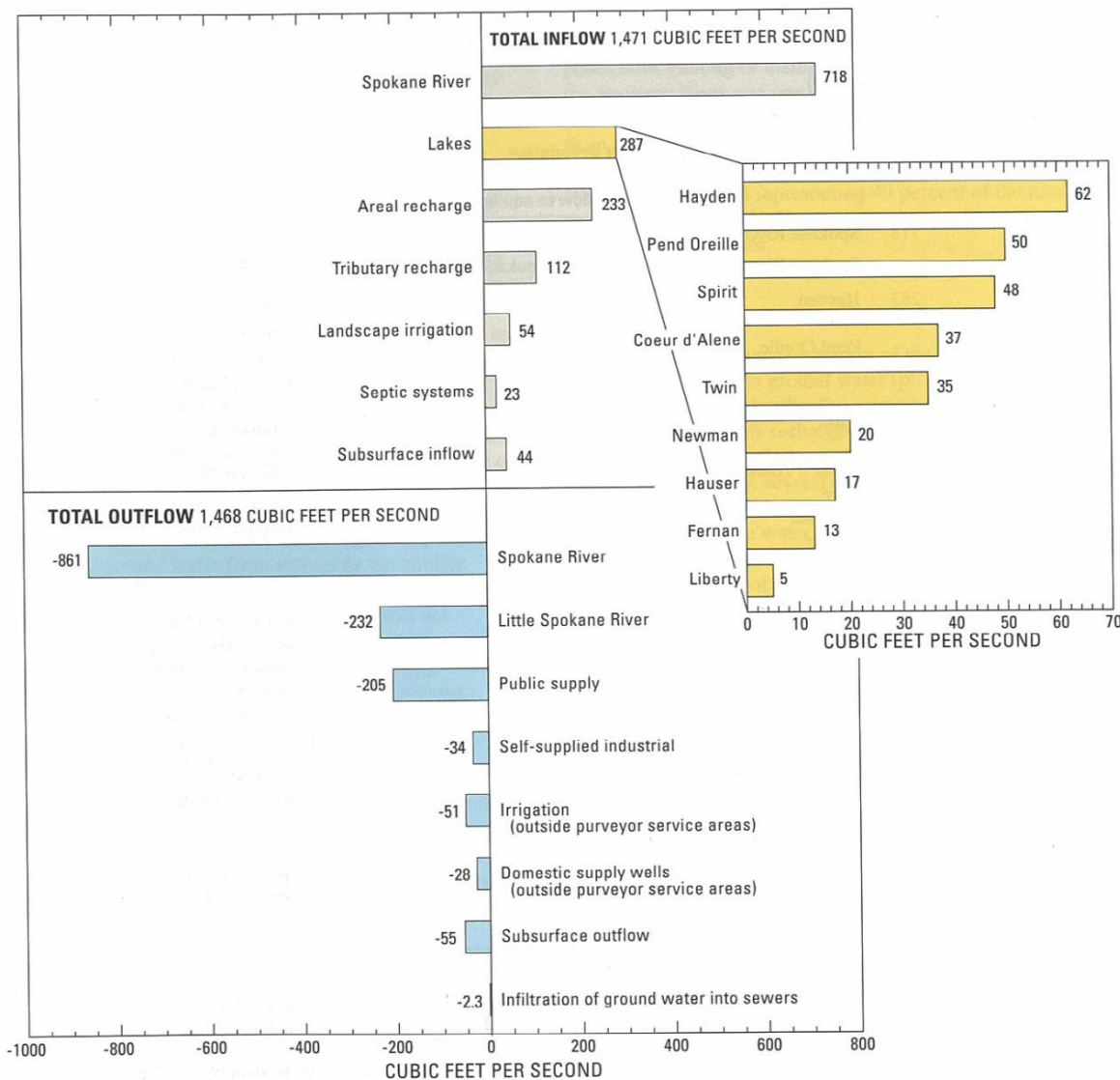


Figure 11. Estimated ground-water budget components for the Spokane Valley-Rathdrum Prairie aquifer for average conditions, 1990–2005, Spokane County, Washington, and Bonner and Kootenai Counties, Idaho. An inset chart shows values for individual lakes.

Approximate Number of Claims Filed

Basin	Number of Claims Filed	Directors Reports
93	565	Filed
92	926	Filed
91	656	Filed
95	1,989	Anticipated early 2018
94	7,742	Filed

Reserved Water Rights

- Idaho Code § 42-1411A
 - Claimant must provide notice
 - “Abstract” of the claim will appear in IDWR’s Director’s Report
 - Same objection/response deadlines as state-based
 - Ultimate burden of persuasion rests with claimant
 - CSRBA district court determines the elements, not IDWR
- Coeur d’Alene Tribe
 - Winters doctrine
 - Priority dates to creation of the reservation
 - Amount of water necessary to accomplish the purpose of the reservation
 - Requires meeting with public caucus.

Tribal Claim Summary (353)

Type of Claim	Number of Claims Filed	Basins	Quantity
Domestic, Commercial, Industrial, Municipal	17	93, 95	7,453 acre-feet per year (AFY), plus 979 wells with use up to 13,000 gallons per day
Instream Flows	72	91, 92, 93, 94, 95	Monthly flow requirements
Irrigation	44	91, 92, 93, 95	17,815 AFY 5,573 acres
Coeur d'Alene Lake	1	95	Maintenance of natural Lake Elevation (2,120' – 2,129')
Springs/ Wetlands	219	91, 92, 93, 94, 95	7,123.6 AFY

- Present and Future Needs on Trust and Tribal Fee Land
- Priority Dates from “Time Immemorial” to 11/08/1873

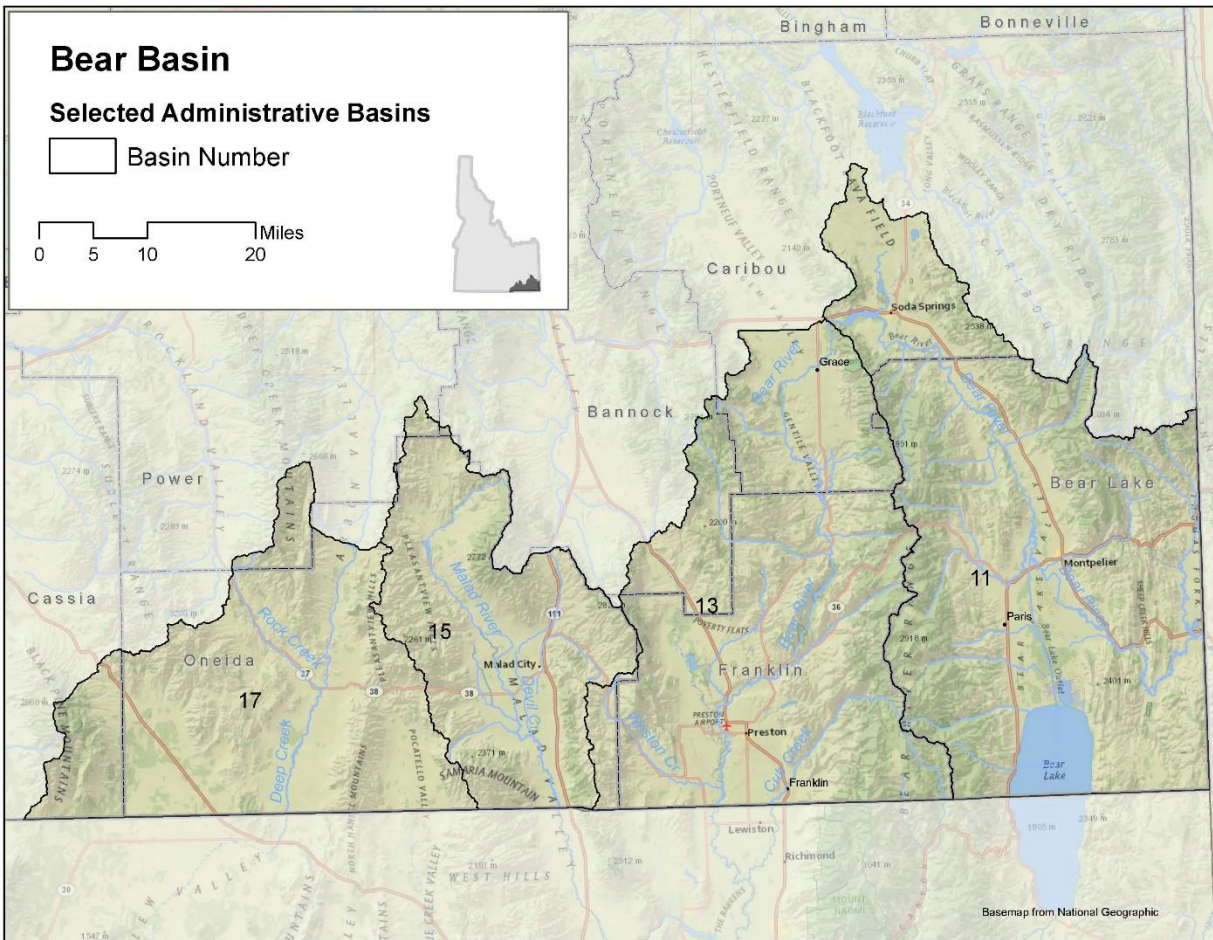
Coeur d'Alene Tribe Reserved Water Rights Status (91-07755)

- CSRBA District Court Decision
 - May 3, 2017 Order on Motions for Summary Judgment
 - Rejected homeland theory
 - Agriculture, fishing and hunting are primary purposes
 - No off-reservation right
 - Priority date
 - Time immemorial for fishing and hunting
 - 11-8-1873 for agricultural uses
 - Reacquisition date for reacquired lands or under state law (on reconsideration)
 - Lake level maintenance for fish and wildlife on reservation
- Settlement Negotiations
 - Started in Spring of 2015
 - Waiting to see if they will resume.

Coeur d'Alene Tribe Reserved Water Rights Status (91-07755)

- Appeal
 - Coeur d'Alene Tribe filed 9-1-2017
 - Purposes of the reservation and priority date
 - United States filed 9-6-2017
 - State of Idaho filed 9-6-2017
 - On-reservation in-stream flow water rights
 - Future water right for fish hatchery
 - Lake level maintenance water right for fish and wildlife purposes
 - Springs and seeps
 - Priority dates to creation of the reservation
 - Amount of water necessary to accomplish the purpose of the reservation
 - North Idaho Water Rights Alliance filed 9-6-2017
 - Hunting and fishing as primary purpose
 - Groundwater
 - Instream flow claims
 - Lake level claim

Bear River Basin Adjudication



- November 2017 letter anticipated to legislators regarding funding the adjudication
- IDWR held dozens of Public Meetings 2014
- Bear River Commission meetings fall 2017

QUESTIONS?

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