

FROM THE PANHANDLE INTO THE ADJUDICATION FIRE

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In 2006, the Idaho Legislature passed a bill authorizing adjudication of the water rights in three northern Idaho watersheds.¹ The three watersheds, in order of their proposed adjudication, are the Coeur d'Alene-Spokane River Basin, the Palouse River Basin, and the Kootenai and Clark Fork-Pend Oreille River Basins.² The decree of water rights for these basins will complete the adjudication of all Idaho water rights. All Idaho attorneys should be aware of the North Idaho Adjudication (NIA) so that their clients may receive counsel related to it and safeguard their water rights.

COMPARING NIA TO SRBA

The primary differences between the Snake River Basin Adjudication (SRBA) that is currently headed toward a final decree and the coming NIA are the total number of claims and the ratio of surface water diverters to groundwater well users. The SRBA decreed over 150,000 separate water rights,³ whereas the total number of water rights within the three NIA watersheds is about 24,500.⁴ This difference in the number of water rights means that the SRBA Court's expertise at processing and handling claims and objections could potentially benefit the NIA by assuring efficiency in the use of both court and water rights holders' resources. Also, the SRBA Court's expertise is one reason not to allow venue in Idaho's First Judicial District (see below), but to use instead the Twin Falls SRBA Court to assure good water law as an outcome. Secondly, due to the numbers of NIA water rights holders and the SRBA Court's expertise, adjudication should only take a relatively few short years, instead of the decades that the SRBA consumed.

SURFACE WATER V. GROUNDWATER USERS

The ratio of surface water users to groundwater well users differs dramatically between the SRBA and NIA. The historic method of procuring water in the relatively dry geographic area⁵ subject to the SRBA was through diversion of the Snake River into ditches serving flat agricultural areas. Over decades, significant numbers of senior water rights were developed in surface water irrigation, prior to many groundwater well users competing for the water resource. In northern Idaho, the mountainous terrain and lack of navigable rivers with steady flows for good diversion works has meant that development of water rights occurred differently. Flat topography and ditch works for irrigation serve relatively few water users up north, in comparison to the more numerous groundwater well users.⁶

MORE RAIN, FEWER PEOPLE

Another significant difference between the SRBA and the NIA regions is that the NIA region has higher annual rainfall⁷ and only fifteen percent of Idaho's population.⁸ This difference probably accounts for some NIA regional attitudes reflecting disbelief that they should be concerned about the amount of available water. If a landowner up north wanted water, he would simply dig or drill a well, or drop a pipe into the nearest lake or river, with little concern except as to proximity to source point or other potentially polluting circumstances. Further, with fewer people in that higher rainfall environment, neighbors could ignore how others conserved or wasted water, unless there was a polluting occurrence that could not be ignored. Thus, northern Idaho's

compliance with the Idaho Department of Water Resources' (IDWR) permit processes will probably be lower than SRBA region compliance. When the cupboard is bare, every crumb is counted, but with a full larder, waste may be ignored.

DOMESTIC WATER RIGHTS INCLUDED

All that is about to end. In addition to a decree of municipal, agricultural and industrial uses, and unlike the SRBA adjudication, the IDWR has stated that the NIA adjudication will include a decree of domestic water rights.⁹ Domestic water rights are:

- (a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
- (b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.¹⁰

The danger for Idaho attorneys' clientele is that small, domestic groundwater well users in the NIA region may not pay sufficient attention to the NIA process. This does not necessarily mean that domestic-water-rights holders in NIA region could lose their right to take water for a beneficial use.¹¹ But it does mean that unless such users verify their right as reported in the IDWR Director's Report, or make a claim to prove their right following commencement of the NIA, the priority date of their right could be advanced to the date of the final decree.¹² Since the SRBA process has taken over nineteen years¹³ and the NIA is targeted for completion in 2015 or thereabouts,¹⁴ NIA-region-domestic-water-rights holders will want to be proactive with the IDWR to make sure their historic priority date(s) are preserved.

OTHER SIGNIFICANT ISSUES

As in the SRBA, the NIA process will include federal-reserved-rights claims. Federal reserved rights are important for three reasons. The first reason is that federal immunity to state laws is waived when water rights within an entire stream system are adjudicated.¹⁵ The second reason is that federal lands constitute a large percentage of land in the NIA region. Finally, as a trustee for Indian lands, the federal government reserves rights to water for the tribes, subject to certain legal restrictions discussed in more detail below.¹⁶ During the NIA, Indian water rights will be adjudicated for the Coeur d'Alene and Kootenai tribes.

FEDERAL RESERVED RIGHTS

The McCarren Amendment¹⁷ waives federal immunity to suit in state courts for the purpose of adjudicating water rights for entire stream systems. That statute mandates consent to joinder should a state request it. Due to the presence of federal lands within the NIA, that adjudication will require joinder of the federal government under the McCarren Amendment.

Further, beyond claims the federal government may have in its own water rights, the McCarren Amendment waiver has been held to create state court jurisdiction over claims of the federal government in its capacity as trustee for Indians¹⁸ and claims of Indian tribes in their capacities as trust beneficiaries.¹⁹ Thus, the NIA will adjudicate federal water rights on federal lands, federal reserved water rights in its capacity as trustee for the Indian tribes, and federal reserved water rights based on Indian tribal claims in their capacities as beneficiaries.

INDIAN WATER RIGHTS

The Coeur d'Alene-Spokane River Basin is the home of the Coeur d'Alene Tribe. The Kootenai Tribe's reservation is within the boundaries of the Kootenai and Clark Fork-Pend Oreille River Basin. The Coeur d'Alene Indian reservation was created by Executive Order of President Ulysses S. Grant on November 8, 1873.²⁰

The Kootenai Tribe's reservation was created October 18, 1974, by allotment.²¹

The U.S. Supreme Court decided the *Winters*²² case in 1908, which held that the Gros Ventre and Assiniboing Indian tribes impliedly reserved their water rights in Montana by the 1888 agreement that created that reservation, and that the later admission into the United States of the Montana Territory as the state of Montana did not sever those rights from the Indians. Thus, the *Winters* case created the rule that lacking express agreement or a treaty reserving water rights, Indian tribes are federal trust beneficiaries of impliedly reserved water rights sufficient to support activities occurring on reservations as of the date when agreements or treaties with the United States created such reservations. Therefore, in the NIA the Coeur d'Alene Tribe and the Kootenai Tribe will probably obtain implied reserved water rights as of the dates of creation of their respective reservations.

Facts related to such a finding on behalf of the Coeur d'Alene Tribe may be subject to the doctrine of collateral estoppel, due to a U.S. Supreme Court case ruling that submerged lands under Lake Coeur d'Alene and the St. Joe River inside the exterior boundaries of the Coeur d'Alene Reservation are held in trust by the federal government for tribal use.²³ The question will then arise as to what quantities of water are necessary to support the Indians' reserved rights. The U.S. Supreme Court developed the Practicably Irrigable Acreage (PIA) standard based on the number of acres of trust land in a reservation,²⁴ but this measurement technique may not adequately address fishing rights, timber growth or other non-agricultural uses, which NIA-region tribes will probably require.

TYPES OF INDIAN WATER CLAIMS

To narrow the scope of such concerns, potential types of NIA tribal claims should be identified. Some claims will be for reservation uses, such as domestic, commercial, municipal, and industrial uses; springs and ponds for livestock and wildlife; irri-

gation from surface and groundwater sources; water to develop or maintain wildlife habitat; and recreation. Other claims may be related to water from outside reservations flowing across reservation boundaries and into reservations (so-called "off-reservation claims"), flowing either by surface or groundwater action. Off-reservation claims may be related to instream flows to support fishing and other traditional activities of a tribe on its reservation, even if no diversion for a beneficial use occurs. But such claims likely require that the documents creating the Indian reservation expressly recognize such purposes.²⁵ In the NIA, it is conceivable that groundwater usage by non-Indians over the Rathdrum Aquifer may impact adjudication of on-reservation claims of the Coeur d'Alene Tribe. More easily envisioned are on-reservation impacts related to instream off-reservation flows from the Coeur d'Alene, St. Joe, and St. Maries Rivers.²⁶ In any case, adjudicators would be wise to avoid creation of future problems as were created by Indian and federal negotiators in the 1800s, when even express water allocations did not include an expectation of future water scarcity due to competing uses.²⁷

Further, the Nez Perce Tribe and the state of Idaho negotiated fruitlessly from 1987 until 1998 when the SRBA Court appointed Frances McGovern as a mediator²⁸ In all fairness, efforts during that time productively isolated issues and educated various parties regarding numerous, extremely complex issues, including impacts of the potential settlement on Endangered Species Act (ESA)²⁹ habitat, hydroelectric power generation, and off-reservation agricultural users. However, as of October 2006, there were few water-rights-related discussions between the two NIA-region tribes and the state of Idaho. Thus the probability of an appointed mediator for tribal claims is high.

THE NIA CALENDAR

Pursuant to Idaho Code § 14-1401 *et seq.*, the Coeur d'Alene-Spokane Watershed Basin adjudication is scheduled to commence in fiscal year 2008, which begins July 1, 2007. The IDWR's petition will be filed and venue will probably lie with the SRBA Court in the Fifth Judicial District, pursuant to its special jurisdiction granted by the Idaho Supreme Court's Provisional Order of September 29, 2006.³⁰ While the Court is not bound by its own provisional order, changing venue to northern Idaho is unlikely.³¹ The broad outlines of the NIA call for each watershed's adjudication to undergo a five-stage, five-year process.

Using the Coeur d'Alene-Spokane Watershed Basin adjudication as an example, the first stage will include commencement of suit by an IDWR petition to the SRBA Court, the initial taking of claims, and the conduct of meetings to prepare and work with various entities.³² The second year's work includes field examinations by the IDWR.³³ In the third year, the IDWR will prepare for the Court recommendations from its findings, which will include all records and claims collated and sorted into a compilation of its Director's Report³⁴ that should be ready for issuance in 2010.³⁵ Publication of the IDWR's Director's Report constitutes an expert opinion³⁶ for the Court to use in addressing objections to that Report. Finally, in 2011, the IDWR envisions the Coeur d'Alene-Spokane Watershed Basin to reach the dispute resolution phase.³⁷

LONG-ARM VENUE

The Idaho State Supreme Court believes that the Twin Falls-based SRBA Court is sufficiently practiced at addressing concerns of distant water rights holders to mollify objections while maintaining cost efficiencies. Thus the venue for the NIA is not likely to be northern Idaho.³⁸ The strong likelihood is that the Idaho Supreme Court will make permanent its provisional order granting special jurisdiction to the SRBA Court. NIA assignment to the SRBA Court will require some combination of video/telephone conferencing and Internet-based claims filing. Efforts in this direction are being planned.³⁹ Major objections in the NIA will be handled with physical visits to northern Idaho.⁴⁰ Thus, venue and jurisdiction for the NIA will probably remain as provisionally granted.

NIA PROCESS FOR MOST USERS

Once the NIA petition is filed by the IDWR, standard Idaho Rules of Civil Procedure and the SRBA Administrative Rules will apply. Pursuant to I.R.C.P. 11(c), verified pleadings are currently required to be attested to before a person authorized to take oaths, such as a notary public, or other person pursuant to Rule I.R.C.P. 28(a). A claim is a pleading before the adjudication courts and pursuant to Idaho Code the SRBA Court required claimants' affidavits⁴¹ to be entered into evidence to support a claim. In order to allow Internet filing to occur, statutory changes are being introduced in the Idaho Legislature to remove this requirement.⁴² Thus, most NIA-water-rights claimants will be able to file their own documents over the Internet directly to the court. Then, they will be able to provide evidence to support their claims or counterclaims directly to the SRBA Court through video/telephone conferencing equipment located in Coeur d'Alene, unless hearings physically located in northern Idaho are required. In that case, SRBA-Court personnel may get to travel to what U.S. Supreme Court Justice Kennedy apparently believes is the most beautiful part of Idaho.⁴³

Evidence of a non-permitted beneficial use or constitutional water right⁴⁴ may be offered through an owner's or neighbor's affidavit, well drillers' records, deeds, estate transfer records, photographs or other physical evidence. Changes in any point or place of diversion of water, place of use, yearly time period of use, or nature of use of water must currently be and should have been reported in the past to the IDWR.⁴⁵ Also, changes in ownership, including division of a right into fractional ownership, or changes of the address of a water right's owner must be reported to the IDWR.⁴⁶ Idaho attorneys should counsel their clients that these records should be gathered now in preparation for the NIA.

UNRESOLVED ISSUES

Challenges before the SRBA Court resulted in Judge Wood's finding in a recent case that the IDWR's management of surface and groundwater rights through the Conjunctive Management Rules (CMRs) resulted in a "diminishment in vested rights," because the CMRs did not "contain reasonable and objective standards, omit[ted] significant [legal] concepts, and failed to establish a timeframe for administration commensurate with the needs for irrigation."⁴⁷ Specifically, that ruling barred the IDWR from using CMRs that shuffle junior and senior-water-rights priorities for the purpose of managing water rights for a given

watershed. Judge Wood's decision requires the IDWR to adhere to Idaho's Constitution, which requires "first-in-time, first-in-right" priority.⁴⁸ Thus, the IDWR must recreate management rules for use in the NIA that account for that court's decision. This is important because unlike the SRBA the NIA does not primarily involve a battle between off-reservation-senior-surface-water diverters and off-reservation-junior-groundwater pumpers. In the NIA, albeit primarily in the Coeur d'Alene-Spokane Watershed, the senior water rights will be the on-reservation, federally-reserved Indian water rights located upstream from the numerous off-reservation, non-federally-reserved downstream groundwater pumpers on the northern shores of Lake Coeur d'Alene and the Rathdrum Prairie Aquifer. The location of the Kootenai Tribe's reservation on the Kootenai River may trigger a similar set of issues.

Further, the NIA process will probably involve the ESA concerning problems associated with Lake Coeur d'Alene's heavy metal sediments located in the superfund⁴⁹ site that extends from the Bunker Mine Complex down the Coeur d'Alene river, through the lake, and into the Spokane River. Provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)⁵⁰ will thus also contribute to the complexity of the NIA. The NIA will involve significant federal and state issues of great magnitude and intertwining complexity.

WASHINGTON'S INTERESTS

One final NIA issue warrants mention. In 2003, the City of Spokane had an estimated population of 196,624.⁵¹ Spokane procures its water from the western end of the Rathdrum Prairie Aquifer. Overshadowing the NIA process may be the insistence of our sister state to impose a temporary moratorium on Idaho's constitutionally-authorized⁵² grants of water rights during the pendency of the NIA. Washington State could bring suit to argue that adverse impacts from Idaho's NIA or its continued constitutional issuance of water rights permits during the NIA implicate interstate commerce violations. Also, Washington could bring suit demanding the creation of an interstate compact between Idaho and Washington as a remedy for interstate disputes over water. Whatever Washington State's approach, there should be no doubt of its concerns over the NIA.

CONCLUSION

While appearing to present a simpler puzzle than the SRBA, the NIA will probably involve as many or more complex federal issues, but there will be fewer parties encumbered by those issues. Ordinary water-rights-holding clients of Idaho attorneys will enjoy electronic filing and local access to a public hearing process run by experienced SRBA-Court personnel. After the NIA, every Idaho citizen can bask in the satisfaction that Idaho is the only state to have successfully adjudicated all of its water rights.

ENDNOTES

¹ H.B. 545, 58th Leg., 2nd Reg. Sess. (Idaho 2006).

² *Id.*

³ Frances McGovern, *Mediation of the Snake River Basin Adjudication*, 42 Idaho Law Review 547, 553 (2006).

⁴ Don Schaff, IDWR Adjudication Bureau Chief, *Projected Counts* (Microsoft Powerpoint slide presentation dated Apr. 17, 2006).

⁵ U.S. Army Corps of Engineers, Luck Peak Master Plan, Vol 2 at § 2.02,

http://www.nww.usace.army.mil/planning/er/lpeak/vol_2/22_02.htm (last visited Oct. 21, 2006).

⁶ The total of previously adjudicated water rights between private parties, licenses and permits, and statutory claims for NIA's Coeur d'Alene-Spokane Watershed is 4,097, whereas the number of recorded wells is 10,858. Schaff, *supra* note 4. In an email, Mr. Schaff stated that for the SRBA region, "IDWR does have records for 42,791 recorded wells prior to Nov 19, 1987, but that number was the tip of the iceberg for the number of claims from wells in the SRBA." Email from Don Schaff, IDWR Adjudication Bureau Chief, to Arthur B. Macomber, Attorney (Oct. 18, 2006).

⁷ See

http://newweb.wrh.noaa.gov/images/otx/climate/precip_climo/id_precip.gif (last visited Oct. 22, 2006).

⁸ Idaho's population is about 1,429,096, see U.S. Census Bureau, 2005 Estimate, <http://quickfacts.census.gov/qfd/states/16000.html>, (last visited Oct. 22, 2006), but the NIA's population is estimated to be 213,268, see U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/16000lk.html>, (statistics for Idaho counties of Boundary, Bonner, Kootenai, Shoshone, Benewah, and Latah, last visited Oct. 22, 2006), thus the NIA has 15% of the SRBA's population.

⁹ Karl Dreher, Director of IDWR, Address at the Idaho Water Adjudication Conference in Post Falls, Idaho (Oct. 11, 2006).

¹⁰ Idaho Code § 42-111(2006).

¹¹ Idaho Code § 42-1408(1)(c)(2006) ("failure to file a required notice of claim will result in a court determination that no water right exists for the use of water for which the required notice of claim was not filed . . .").

¹² Dreher Address, *supra* note 9.

¹³ The initial adjudication date of SRBA was November 19, 1987. See IDWR Website, <http://www.idwr.idaho.gov/water/srba/SRBA%20Court/main%20page.htm> (last visited Oct. 22, 2006).

¹⁴ Schaff, *supra* note 4, *Target IDWR calendar for NIA* (Microsoft Powerpoint slide presentation dated Apr. 17, 2006).

¹⁵ 43 U.S.C. 666(a)(2004).

¹⁶ See *United States v. New Mexico*, 38 U.S. 696, 702 (1978).

¹⁷ 43 U.S.C. 666(a)(2004).

¹⁸ *Colo. River Water Conversation Dist. v. United States*, 424 U.S. 800, 813 (1976).

¹⁹ *Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 570 (1983).

²⁰ *Indian Affairs: Laws and Treaties, Vol. I, Laws, Part III – Executive Orders Relating to Indian Reserves* at 835-837 (Charles J. Kappler, ed., 1904) (compiled to December 1, 1902), available at http://digital.library.okstate.edu/Kappler/Vol1/HTML_files/IDA0835.html, (last visited Oct. 23, 2006).

²¹ Pursuant to the General Allotment Act of February 8, 1887 (ch. 119, 24 Stat. 388, codified at 25 U.S.C.A. 331), Congress passed Senate Bill 634 (titled: *A bill to declare that certain federally owned lands shall be held by the United States in trust for the Kootenai Tribe of Idaho*; sponsored by Senator Frank Church (ID); co-sponsored by Senator James A. McClure (ID); and introduced on January 31, 1973), as the Act of Oct. 18, 1974, Pub. L. No. 93-458, 88 Stat. 1383.

²² *Winters v. United States*, 207 U.S. 564, 576 (1908).

²³ *Idaho v. United States*, 533 U.S. 262, 280-81 (2001).

²⁴ *Arizona v. California*, 373 U.S. 546, 600-01 (1963).

²⁵ *United States v. New Mexico*, 438 U.S. 696, 707 (1978) (In dis-

cussing the Organic Administration Act of 1897, the Court stated Congress "intended national forests to be reserved [to] . . . conserve the water flows, and to furnish a continuous supply of timber for the people . . . [but that n]ational forests were not to be reserved for aesthetic, environmental, recreational, or wildlife-preservation purposes."). Arguably, unless congressional intent recognized uses requiring off-reservation water, such claims would not be recognized.

²⁶ As to off-reservation, instream-flow-reserved-water-rights claims, the Nez Perce filed such claims in the SRBA and Judge Wood refused to recognize such claims. See *In re SRBA Case No. 39576*, Consolidated Subcase 03-10022 at 47, (Idaho 5th Judicial Dist. Ct., Twin Falls County, Nov. 10, 1999) (currently on appeal); *In re SRBA Case No. 39576*, Subcase 03-10022 (Idaho 5th Judicial Dist. Ct., Twin Falls County, June 27, 2005). Certainly the Nez Perce appeal has interesting implications for Coeur d'Alene Tribal water rights claims impacted by cleanup of the superfund site that begins at the Bunker Mine Complex and continues down the Coeur d'Alene River, through Lake Coeur d'Alene, and into the Spokane River.

²⁷ *In re SRBA Case No. 39576* at 47 ("[T]he Nez Perce do not have Indian reserved instream flow water rights extending beyond the boundaries of the present Reservation, where ever [sic] those boundaries may be").

²⁸ *In re SRBA*, No. 39576, Consolidated Subcase No. 03-10022, *Order of Mediation and Appointment* at 1 (Idaho 5th Judicial Dist. Ct., Twin Falls County, Dec. 21, 1998).

²⁹ 16 U.S.C.A. §§ 1531-1544 (2005).

³⁰ See *In the Matter of the General Adjudications of Rights to Use of Water From the Water Systems of the Coeur d'Alene-Spokane River Basin, the Palouse River Basin, and the Clark Fork-Pend Orielle River Basins*, Provisional Order Re: Appointment of District Judge, Confirmation of Special Jurisdiction and Determination of Venue for the General Adjudications of the Coeur d'Alene-Spokane River Basin, the Palouse River Basin at 2, and the Clark Fork-Pend Orielle River Basins, (Idaho, Sep. 29, 2006) (hereinafter "*In re Matter of the General Adjudication of Rights*").

³¹ Idaho Code § 42-1407(1) (2006).

³² Schaff, *supra* note 4, *Projected Milestones, By Fiscal Year – Northern Basins* (Microsoft Powerpoint slide presentation, dated April 17, 2006).

³³ Idaho Code § 42-1410 (2006).

³⁴ Idaho Code § 42-1411 (2006).

³⁵ Schaff, *supra* note 4, *Projected Milestones, By Fiscal Year – Northern Basins* (Microsoft Powerpoint slide presentation, dated April 17, 2006).

³⁶ Idaho Code § 42-1401B(1) (2006).

³⁷ See note 33.

³⁸ See *In re Matter of the General Adjudication of Rights*, note 30, *supra*.

³⁹ Telephone interview with Diana Delaney, SRBA court employee, on behalf of Eric Wildman (Oct. 20, 2006).

⁴⁰ See *In re Matter of the General Adjudication of Rights*, note 30, *supra*.

⁴¹ Idaho Code § 42-1409(3) (2006).

⁴² Executive Agency Legislative System (EALS) No. 360-01, Fiscal Year 2008 Statutory Change Request by Dave Tuthill, IDWR, submitted Aug. 7, 2006 ("[The] notarization requirement hinders the ability of a water user to file a claim using the internet... [and] implementation... will decrease the cost of an adjudication... by removing the need to travel to a notary[, thus enabling] internet filing.").

⁴³ *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 261 (1997) (Justice Kennedy's opinion begins stating, "In the northern region of

Idaho, close by the Coeur d'Alene Mountains which are part of [the] Bitterroot Range, lies tranquil Lake Coeur d'Alene. One of the Nation's most beautiful lakes, it is some 24 miles long and 1 to 3 miles wide. The Spokane River originates here and thence flows west, while the lake in turn is fed by other rivers and streams, including Coeur d'Alene River which flows to it from the east, as does the forested Saint Joe River which begins high in the Bitterroots and gathers their waters along its 130-mile journey.”).

⁴⁴ See IDAPA 37.03.02, Beneficial Use Examination Rules.

⁴⁵ Idaho Code § 42-108 (2006).

⁴⁶ Idaho Code § 42-248 (2006).

⁴⁷ *Am. Falls Reservoir Dist. #2 v. Idaho Dep't of Water Res.*, Case # CV-2005-0000600, *Order on Plaintiff's Motion for Summary Judgment* at 125, (5th Judicial Dist. Ct., County of Gooding, June 2, 2006).

⁴⁸ Idaho Const. Art. XV, § 3.

⁴⁹ 42 U.S.C.A. § 9601(11) (2004) (defining “Fund” or “Trust Fund” in CERCLA to “mean[] Hazardous Substance Superfund established by section 9607 of Title 26.”).

⁵⁰ 42 U.S.C.A. §§ 9601–9675 (2004).

⁵¹ U.S. Census Bureau, 2003 Estimate, <http://quickfacts.census.gov/qfd/states/53/5367000.html> (last visited 10/26/06).

⁵² Idaho Const. Art. XV, § 3. (“The right to divert and appropriate... for beneficial uses... shall never be denied...”).

ABOUT THE AUTHOR

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