

TO: Caribou County Sun, Montpelier News Examiner, Preston Citizen, Idaho Enterprise  
FROM: Mark Mathews - Guest Editorial Letter  
RE: Bear River Adjudication  
DATE: February 3, 2020

### **SUPPORT BEAR RIVER ADJUDICATION**

As President of Last Chance Canal Co. and also the Bear River Water User's Association (BRWUA) I am writing this letter to urge support of legislation introduced by Rep. Marc Gibbs and Sen. Mark Harris to commence the general adjudication of the Bear River Basin in Idaho, to provide state funding and to protect existing Idaho water rights.

BRWUA members include all of the canal companies in Idaho and Utah along with small pumpers along the river that hold both natural flow rights in the Bear River and storage water rights in Bear Lake which they rely upon to collectively irrigate in excess of 150,000 acres of fertile farmland. After careful study BRWUA as well as the vast majority of other water users up and down the river have provided unanimous support of the adjudication of the Bear for numerous reasons which I wish to explain.

Candidly, there are some burdens associated with an adjudication which we have carefully weighed. An adjudication will require commitments of time and effort from water users and the State of Idaho, and in some instances, there will be conflict as lawful water rights are sorted out. Yet, based on years of experience during the recently concluded Snake River Basin Adjudication and ongoing North Idaho Adjudication, we believe that the many benefits significantly outweigh small burdens for water users in the Bear River Basin.

One key benefit is the opportunity to correct errors and accurately define existing water rights. The Bear River and its tributaries in Idaho were last adjudicated in 1920 in what is commonly called the "Dietrich Decree." The Dietrich Decree did not define water rights with the level of detail the Idaho Department of Water Resources (IDWR) now uses. Water right ownership, points of diversion, and places of use have in many instances changed over the past 100 years, without the records of the IDWR being updated. Consequently, many water rights in the Bear River Basin are not accurately or clearly defined. This has led to confusion and makes it increasingly difficult for IDWR to properly distribute water. It also frequently creates problems for landowners, lenders, and prospective buyers when land and water rights change hands or when a water user seeks to change how their rights are used. A general adjudication will help solve these problems by establishing a complete and accurate catalog of all water rights.

A second major benefit is the opportunity to take advantage of three statutes that enable water users update and correct water rights to accurately reflect current irrigation practices. The "accomplished transfer" statute (Idaho Code § 42-1425) allows water users to claim their current place of use, point of diversion, purpose of use, and period of use even though it differs from what was previously decreed, without having to file a


transfer application with IDWR. The “enlargement” statute (Idaho Code § 42-1426) allows water users to claim additional acres than were previously decreed under certain circumstances. The “ambiguous decree” statute (Idaho Code § 42-1427) allows water to claim water right elements that were not defined in prior decrees. These statutes only apply in a general adjudication. They were enacted in connection with the Snake River Basin Adjudication, were extended to include the North Idaho Adjudication and will be extended to the Bear River Adjudication as a part of the legislation package.

A third benefit is the opportunity to take advantage of the experience and wisdom that presently exist in the water court and the IDWR. The State of Idaho completed a few years ago adjudication of some 157,000 water right claims in the Snake River Basin Adjudication (SRBA), and is presently nearing completion in adjudicating water rights in northern Idaho. As a result of these adjudications the legal disputes were all resolved establishing clear legal precedent that will readily apply to the facts pertaining sorting out existing water rights and confirming actual diversions and beneficial use. These adjudications are carried out by a special water court, with assistance from the IDWR, both of which have developed specialized expertise and technology for the task. While the SRBA took many years to complete, the vast majority of the claims were uncontested and resolved efficiently. Further, many complicated legal issues involving ground water rights, surface water rights, tribal rights, and Federal rights were resolved during the SRBA, establishing precedent that should not need repeating in the Bear River Basin.

With the SRBA complete and the expertise of the IDWR and the water court in place the time is now ripe to begin an adjudication of the Bear River Basin. Legislation to start the Bear River adjudication was presented back in 2016, but tabled for a two year period at the request of a few users to allow more time for the water user community to become better educated and prepared. It is now the right time to move forward which I am convinced will provide long-term economic benefits to the region as well a protect Idaho water rights in the Bear River basin.

Rep. Gibbs and Sen. Harris have carefully crafted the necessary legislation to initiation the adjudication of the Bear River Basin, to provide state funding and to protect existing water rights. This legislation has recently received the full support of the Idaho Water Users Association. Please contact Rep. Gibbs ([mgibbs@house.idaho.gov](mailto:mgibbs@house.idaho.gov)) and Sen. Harris ([mharris@senate.idaho.gov](mailto:mharris@senate.idaho.gov)) and add your support to ours.

Sincerely,



Mark Mathews

Grace, Idaho

President - Last Chance Canal Co.

President – Bear River Water User’s Ass.