

Idaho's Water Wars

By Stephen Stuebner

Thirteen years ago, when irrigation and hydropower interests reigned supreme, a few daring environmentalists suggested the unthinkable — reserving water in streams and lakes for fish, wildlife and recreation. It was a revolutionary idea that made the agriculture-dominated Idaho Legislature nervous. Since the late 1800s, Idaho's rivers and lakes had been routinely tapped for growing crops. Later, they were harnessed to churn out kilowatts of electricity. Everything else, such as the state's trophy trout waters and whitewater rivers, came second.

But that began to change when the 1978 Legislature passed a law that gave previously "inferior" resources legitimate legal standing. Pressured by a citizens' initiative petition drive, lawmakers allowed the Water Resources Board — an eight-member committee appointed by the governor — to reserve in-stream flows for fish, wildlife, recreation and such elusive concepts as "aesthetics."

**Can Idaho's rivers
provide both business
and pleasure for those
who want water?**

The new law etched the first cracks in the political dam impounding Idaho's water for irrigation and power generation.

Earlier this year, Friends of the Payette (FOP), a river conservation group, and the Water Resources Board drove a big spike in the dam, springing a leak that may become a torrent in the 1990s. FOP employed every tool

in the political trade to convince the board and then the Legislature that the Payette River's whitewater boating, trout fishery and beauty should be protected from hydroelectric projects.

The Payette was one of five river basins initially studied for protection under the revised State Water Plan, the others being the Priest, Henrys

The South Fork of the Payette
popular with rafters, canyoneers and
kayakers, received protection from
hydropower development with
passage of the Wild and Scenic
River Plan.



**Idaho rivers
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under an allocation
system devised
by settlers
in the 1880s**

Fork, South Fork Boise and the Middle Snake. In addition to the Payette River Plan, the Legislature approved plans for the Priest and South Fork of the Boise. Study extensions were given to the Henrys Fork and Middle Snake. Eventually, comprehensive plans will be designed for all river basins in the state, guiding development and use of the rivers.

Gene Gray, former Water Board chairman, notes that FOP's campaign was a citizens' movement — the first of many to come, he predicts. Above all else, he says, citizens want to protect Idaho's rich quality of life — something Idahoans have typically taken for granted.

He believes the group's victory could encourage more citizen activism in Idaho water politics. "I think we're seeing a changing of the guard," says Gray, a fortyish Payette farmer and insurance agent who is learning to kayak this summer. "The cowboy control over the Legislature is no more. And we're seeing people move into this state who see a beautiful jewel and, by God, they're going to protect it."

Lynn Tominaga, water and public policy analyst for the Idaho Water Users Association and former Rupert state senator, says, "We've seen a tremendous increase in the number of grass-roots environmental groups in Idaho. There's over 80 organizations in Idaho that have some kind of fishing, hunting or environmental interest. And they're all very active."

Adds Wendy Wilson, co-director of FOP and founder of Idaho Rivers United, "We are starting to get a foothold, but we've got a long way to go. What we're looking for is a balance of uses so the public can get the highest value out of its water."

When American settlers moved West in the 1880s — all in search of "greener pastures" and a better way of life — western states divided up rivers and lakes under a system of water rights, a rigidly controlled allocation system. Farmers who arrived first secured the most senior rights under the simple, time-honored doctrine of first-in-time, first-in-right.

This is the system that still controls Idaho water today. When Congress entered the business of building dams beginning in the early 1900s, it dedicated the projects to irrigation, and later, flood control and power generation. Farmers were charged small fees



The ongoing adjudication of farmers' water rights

for the storage water, and the revenues were applied to the dams' cost at no interest.

This arrangement, coupled with farmers' existing water rights, led some to adopt the belief that they owned the water. It's a view still shared by many in agribusiness today. The dominance of irrigators over the Snake River is most vividly illustrated at Shoshone Falls, one of the highest waterfalls in North America. Since the early 1900s, irrigators have diverted most, if not all of the Snake's flow upstream at Milner Dam, reducing the falls to a trickle in the summer.

Conflicts over Idaho's water infer a battle over dwindling resources. While no surplus remains, according to authorities, all parties agree that the state is richly endowed with water supplies. Idaho leads the nation in per-capita water use. The Snake River — frequently referred to as the state's lifeblood — is the 10th longest in the United States. It exceeds by 2.5 times the volume of the Colorado River.

"We have plenty of water for recreation, wildlife, fish and the traditional uses," Wilson says. "There are win-win solutions out there."



may uncover water that cannot be accounted for, a key opportunity for restoring water to rivers.

State authorities have embarked on a major fact-finding mission to determine just how much water farmers and ranchers use. It's called the Snake River adjudication, a decade-long court inquiry into water rights. In 1998, the results will be in, at least those not appealed to higher courts.

Conservationists view the adjudication as a key opportunity for restoring water to rivers and lakes, particularly during the late fall months, when irrigation sucks some streams dry.

Scott Reed, a Coeur d'Alene attorney and former Water Board member, says, "The adjudication, if it's done properly and based on the concept of beneficial use, could uncover a lot of water that can't be accounted for."

For example, some farmers in the upper Snake River use five times as much water to grow the same crops as farmers further downstream. The upper Snake farmers may have difficulty justifying the use.

Conservationists have used the 1978 legislation to petition the Water Board to establish minimum streamflows for various streams, reserving water for non-consump-

tive use. The board and Legislature have reserved minimum flows for nearly 40 streams in the last 12 years. Recipients include Silver Creek, the Payette River, Big Wood River, Box Canyon Creek and Minnie Miller Springs.

But minimum flows are subordinate to senior water rights, and therefore lack a total guarantee that some water will remain in the stream. "The promise of a minimum streamflow program hasn't been fulfilled," Wilson says. "On a high percentage of river miles in the state, most of the minimums are pathetically low flows to keep the fishes' dorsal fins wet."

Reed, a chief proponent of minimum streamflows in the 1970s, admits the program is weak. "There isn't a paper device that allows for the purchase of water and leaving it in the river," he says. "What you're really after are the senior water rights."

In California, city dwellers and farmers have bought and sold water rights for large sums under a willing-buyer, willing-seller system. In Idaho, only a handful of transactions have occurred. Idaho Fish and Game, for instance, purchased 50,000 acre feet of

water in Lucky Peak Dam to reserve year-round minimum streamflows for the Boise River through Boise to protect the trout fishery.

Fominaga says recreationists and conservationists ought to consider purchasing water if they want a larger stake in its management and use. "The irrigators put up the money to build the dams," he says. "Environmentalists want control of the dam operations without putting up the money. Maybe there will come a time when that needs to happen."

Gray agrees. "Right now, the recreationists are getting a free lunch," he says. "On the Payette, the reservoirs provide season-long flows that allow whitewater boaters to have one heck of a great experience. Maybe they should pay a fee to float the river ... I think most people would pay it."

"The money would be there if we were allowed the option of purchasing water," Wilson says. "Right now, there's no mechanism for pushing conservation in water marketing and water banking."

A bill sanctioning the purchase or donation of water rights for conservation cleared the Idaho Senate in the 1991 session, but it failed to pass the House. Most expect it to be approved next year.

Ed Wood, a retired physician in Cascade and Friends of the Payette member, takes the position that Idaho's water belongs to the people. "The irrigators got that water years ago for a mere pittance. If anybody should buy water, the state should buy it and give it back to the people," he says.

While the current of Idaho water management does seem to be changing, the balance of power has yet to shift, says Wilson. "At this point the irrigators still have the upper hand," she says.

Conservationists won modest victories on the Payette River, but Wilson notes the success came only with a tremendous amount of effort. "If we have to put that much work into each and every river it's going to be a long process," she says.

"The pendulum is starting to swing," adds Wilson. "But we're going to have to give it a pretty big shove to see any difference in Idaho rivers." □

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