

State Threatens to Diminish Treasure Valley Water Rights

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If your property receives irrigation water from the Nampa & Meridian Irrigation District or any one of many other irrigation entities that receive water from the Boise River, this article is important to you. Your water rights and property values are at stake!

What is at Stake?

In early 2013, the Idaho Department of Water Resources (State of Idaho) sought negotiations with the major Irrigation Districts that are supplied by water from the Boise River. The intent of the negotiations was to get the Boise River water user's to agree to give up some of their water rights by getting the user's to exchange the more senior priority dates for much less dependable junior water rights. In doing so, those with senior water rights would basically be sent to the back of line in order to fulfill their water rights during the irrigation season. Many local Irrigation Districts have strongly objected to this change.

As a water user on the Boise River System you have some, if not all, of the following rights associated with water use:

- Priority Date: The priority date is the point in time in which your water right was filed with the State of Idaho and so dictates the priority in which your individual water right ranks among other water right holders. This concept is often referred to as "First in Time, First in Right."
- In-Stream Flows: In-stream flows are also a prioritized right that allows water that is deemed as the "Natural Flow" of the river to be used by those individuals who have water rights; this water is not subject to being stored in any of the reservoirs, and, in fact, must pass through the reservoirs to satisfy stream flow requirements and whatever rights (according to priority dates) that the natural flow can accommodate.
- The Right to Store Water: If your water right entitles your property to storage space in one or more of the three reservoirs on the Boise River System, you have the right to have water stored within those reservoirs on your behalf. Furthermore, no one else can use that space to store water. Those storage facilities are--Arrowrock, Anderson Ranch and Lucky Peak Reservoirs.
- The Right to Beneficial Use: This is your right to exercise your water right in a beneficial manner.

All water rights on the Boise River System have a "Priority Date." Some water rights are in the form of River Rights (natural stream flow) and some water rights are called Storage Rights (water that is or has been stored in reservoirs.) Your water right is held on your behalf by your Irrigation District. The value of a water right depends on the priority date in which the right was filed with the State. Your water right could be a River Right, a Storage Right or a combination of both. The priority of your water right determines whether you are a Senior or Junior Water Right holder. Aka: "First in Time, First in Right"

Some of the earliest River Rights (natural flow rights) date back to the latter half of the 1800s. These are the most senior water rights on the Boise River and must be satisfied with the prescribed amount of water they are entitled to prior to any other water rights being used in the Boise River system.

Water storage rights on the Boise River System date back to 1911 with the conception and construction of Arrowrock Dam which was completed in 1915. Additional storage rights were established with the completion of Anderson Ranch Dam in 1950. These facilities are paid for and maintained by YOU, the water user, and were designed, in large part, for storing water to extend the irrigation season. Lucky Peak Reservoir was completed in 1955 and was intended primarily for flood control; however, there are some Districts that have storage rights in Lucky Peak. If these three dams did not exist, our irrigation season would be over by mid-summer at the latest.

Here's the Problem:

In normal years more water flows down the Boise River than what can be safely held in the three reservoir system. Therefore, water is released for what is called "Flood Control" in anticipation of additional runoff. This release is done to protect property along the banks of the Boise River from flooding and is done under protocol developed 30 years ago with the Army Corp of Engineers and the Bureau of Reclamation. These releases can be a gamble because the anticipated snow pack can be overestimated. If this occurs, the flood releases are too large thus leaving the potential for water rights to fall short of being fulfilled.

Idaho's Department of Water Resources (IDWR) and the Idaho Attorney General's office are proposing two plans which would significantly and adversely affect your rights to water from the Boise River System; the more senior your water right, the more devastating these two proposals will be to you as the water user.

(1) As stored water is released for flood control from the three reservoir system, IDWR wants to have that water counted against the most senior storage water rights. This action would allow your stored water to have passed through the dams and down the river and would only allow senior storage space holders to refill after all subsequent junior water rights have been filled. This proposal effectively changes any existing senior water rights to the most junior of water rights! IDWR and the Attorney General argue that the Districts and you, the water user, who have senior water rights have no right to store water after the flood control release has occurred and before any junior water rights have been fulfilled.

(2) IDWR is trying to get the most senior storage water right holders to accept a proposal that would severely affect priority dates for any right to store water after flood control releases. The Irrigation Districts have refused to agree to IDWR's efforts to change the priority dates of your water rights. However, IDWR continues to insist on revising the priority dates without consent of the Irrigation Districts. If IDWR succeeds, the availability of water to you will be severely impacted and potentially reduce the value of your property!

Arrowrock and Anderson Ranch Dams were substantially paid for by those that have storage rights within them. If IDWR is successful, they will have taken rights from those who paid for and continue to maintain these storage reservoirs without any cost to them. As senior storage water right holders you will have to go to the back of the line before you can satisfy your water rights, assuming there is any water left to store!

Many of the Treasure Valley's Irrigation Districts have banded together and have exhausted nearly every effort to find a political solution or a negotiated solution to this issue so that serious injury to our water right holders will not occur. We have been stopped with every attempt. Consequently, we are now faced with fighting this battle as the Defendant in a Contested Case before the Director of IDWR and/or to the Snake River Basin Adjudication (SRBA) Court and, potentially, an even higher court.

It is hard to place a price on the value a water right brings to your land because all lands have different dynamics. Regardless, Nampa & Meridian Irrigation District's Board of Directors, and others believe this is a battle that must be fought to protect the value of the assets of our patrons whether you are a rural or an urban water user. Over the coming months (and perhaps years) Nampa & Meridian Irrigation District will be actively engaged in fighting to preserve the longstanding storage rights that you own.