

# Coeur d'Alene Tribe Water Rights



Rhylee Marchand  
In-House Attorney

# Tribal Council

Back Row L-R:  
Charlotte Nilson, Dave  
Matheson, Don Sczenski,  
Christopher Luke, Gene  
James

Front Row L-R: Chief  
Allan, Vice Chair; Ernest  
Stensgar, Chairman



# Idaho v. United States

533 U.S. 262 (2001)

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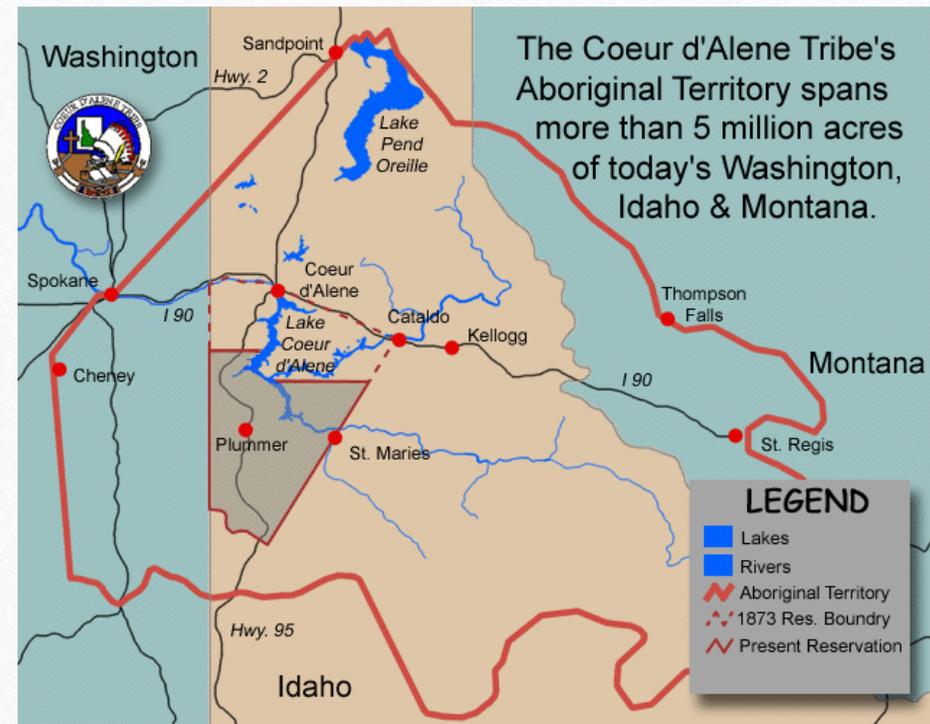
- Procedural History:

- U.S. District Court for the District of Idaho: quieted title in favor of the U.S. in trust for the Tribe
- 9<sup>th</sup> Circuit Court of Appeals affirmed the District Court's holding
- State of Idaho appeals and U.S. Supreme Court grants cert.

# Idaho v. United States

533 U.S. 262 (2001)

- Issue: Whether the United States holds the title, in trust for the Coeur d'Alene Tribe, to lands underlying portions of Lake Coeur d'Alene and the St. Joe River
- Opinion relied on a two-step inquiry
  - 1) Whether Congress intended to include land under navigable waters within the federal reservation of land, and if so;
  - 2) Whether Congress intended to defeat the future State's title to the submerged lands



# Idaho v. United States

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- Decided June 18, 2001
- In a 5-4 opinion, the U.S. Supreme Court held that the United States held, in trust, for the Coeur d'Alene Tribe the lower 1/3 of lake Coeur d'Alene and the St. Joe River, including the submerged banks and beds.

# Coeur d'Alene Tribe Lake Management

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- The Tribe's Lake Management Department was formed by the Coeur d'Alene Tribal Council in March 2003. This formation was the official acknowledgement that the Tribe's jurisdiction over waters within the Reservation boundaries (i.e. Tribal Waters) had been reaffirmed by the United States Supreme Court, and that the Tribe has the responsibility to manage and protect these waters.



# Coeur d'Alene Tribe Lake Management

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- **Goals of regulations:**
- **Environment** – Environmental protection is enhanced by limiting the types of materials that are allowed to be used in dock construction and stored on docks. In particular, wood preservatives, fuel storage, and floatation material are restricted to ensure that water quality and fish and wildlife habitat are not harmed. Construction location and size are also a consideration in areas that new construction or modification of existing encroachment would have negative impacts on fish and wildlife habitats
- **Aesthetic Beauty and Property Values** – Waterfront land ownership represents a significant investment. A neighboring dilapidated dock decreases everyone's enjoyment of the resource and also reduces the value of surrounding development. Our program has developed Encroachment Standards with assistance from local individuals, groups and agencies for repair of dilapidated docks and an inspection program that ensures these nuisances will be identified and addressed.
- **Safety** – Docks in poor condition can literally fall apart and their pieces disperse into open water. These create a property damage hazard for boaters and risk of personal injury to the recreating public. A well funded inspection program helps maintain high standards and reduce the risk to public safety.
- **Tribal Values** – Most importantly, the standards must protect Tribal Values. To the Coeur d'Alene people Tribal Waters are more than a place to recreate. It is the setting that shaped Tribal culture, society and religion. It must be treated with respect by all who happen upon it.

# Coeur d'Alene/Spokane River Basin Adjudication

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- In 2006, the Idaho State legislature authorized the Idaho Department of Water Resource (IDWR) to proceed with planning and designing the administrative mechanisms for commencing three water right adjudications in Northern Idaho, beginning with Coeur d'Alene/Spokane River Basin (CSRBA)
- November 12, 2008, the District Court initiates general adjudication of the Coeur d'Alene/Spokane River Basin.
- The Idaho Water Court is located in Twin Falls Idaho.

# Coeur d'Alene/Spokane River Basin Adjudication-Procedural History

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- March 26, 2014: US files 353 claims asserting entitlement to federally reserved water rights on behalf of the Tribe in the CSRB.
- Early in the day on May 3, 2017: District Court entered summary judgment order finding that when the reservation was created, Congress impliedly reserved water rights for the Tribe's use.
- Later in the day on May 3, 2017: District Court entered summary judgment order (order disallowing claims) disallowing 84 claims and set the priority dates for different types of claims.

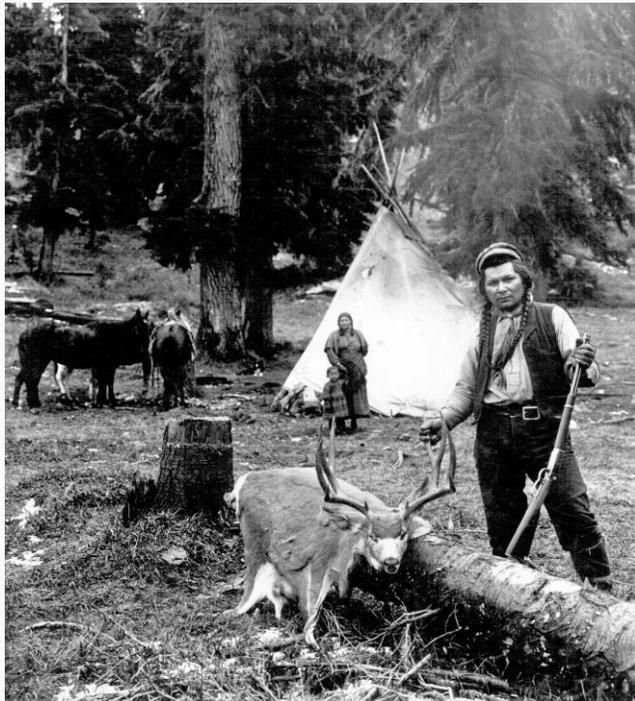


# CSRBA: Summary Judgment Order

- In this order, the District Court determined that the federally reserved water rights could be implicitly reserved only for the primary purpose of the reservation. The Court went on to find that the primary purposes of the reservation was agriculture, fishing, hunting, and domestic purposes. This limited the Tribe's claims to only these purposes. (*United States v. New Mexico*, 438 U.S. 696 (1978))
- The Court found that the Tribe was not allowed to any water rights claims for:
  - Claims based on a homeland purpose theory;
  - Claims based on secondary purposes (including industrial, commercial, recreation, aesthetics)
  - Claims outside the boundaries of the reservation; and
  - Claim for lake level maintenance



# CSRBA: Order Disallowing Claims



- In this order, the district court disallowed 84 claims because the court determined, they were based on improper legal grounds.
- This order also set out priority dates for different types of claims
  - Agriculture & Domestic use claims: November 8, 1873
  - Hunting & Fishing claims: time immemorial
  - Reacquired lands: either a date of perfected state water right or, if no water right, the date of reacquisition.

# Coeur d'Alene/Spokane River Basin Adjudication-Procedural History

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- After summary judgment order was issued, the State filed a motion to reconsider the summary judgment order and the Tribe & United States filed a joint motion to modify the order disallowing claims.
- July 26, 2017:
  - Order granting reconsideration: changed priority dates for different claims
  - Order granting modification: concluded that instream flows for fish habitat had been incorrectly disallowed in its previous order and issued an amended order on July 26, 2017



# Coeur d'Alene/Spokane River Basin Adjudication-Procedural History

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- Overview of Orders

- May 3, 2017:
  - Order Granting & Denying Summary Judgment;
  - Order Disallowing Certain Claimed Purposes for the Reservation;
  - Order Disallowing Claims (later determined to be partially erroneous)
- July 26, 2017:
  - Order Granting Reconsideration (clarified priority dates in the S.J. Order);
  - Order Granting Modification (upheld the denial of plant gathering purpose & explained what claims had been erroneously disallowed);
  - Amended order disallowing claims (which removed 15 erroneously disallowed claims from the previous order)

# CSRBA: Appeals

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- United States: appeals claims that it made on behalf of the Tribe that had been denied.
- State of Idaho: contesting claims to water rights granted by the district court.
- Tribe: appeals and argued that the district court erred in rejecting the Tribe's claims
- North Idaho Water Rights Alliance (NIWRA): appeals arguing the district court erred by allowing certain claims of the U.S. & Tribe

# Idaho Supreme Court: In Re: CRSBA Case No. 49576

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- The Idaho Supreme Court adopted the history of the Coeur d'Alene Tribe & the Reservation from the U.S. Supreme Court decision in *Idaho v. United States*.
- The Court held that the reservation was created with the November 8, 1873 Executive Order
- The Court held that the 1887, 1889 and 1891 agreements may be used to determine the purposes of the reservation and do not limit those purposes.

# Idaho Supreme Court: In Re: CRSBA Case No. 49576

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- Whether the primary-secondary purpose analysis set out in *United States v. New Mexico* applies to Indian reservations or, if it is limited to non-Indian federal reservations.
  - The Court determined this analysis is not appropriate for Indian reservations, siding with the Supreme Court of Montana and the Supreme Court of Arizona:



# Idaho Supreme Court: In Re: CRSBA Case No. 49576

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- Homeland Purpose Theory: reservation was established as a “home and abiding place of Indians” *Winters v. United States*, 207 U.S. 564 (1908)
  - Broad primary purpose of Indian reservations
  - The Idaho Supreme Court applied the homeland purpose because it is evidenced by the formative documents of the reservation that this theory should apply.

# Idaho Supreme Court: In Re: CRSBA Case No. 49576

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- *“We think it hard to leave at once old habits to embrace new ones: for while yet we need [to] have some hunting and fishing”* 1872 Petition by the Tribe
- *“The waters running into said reservation shall not be turned from their natural channel where they enter said reservation”* 1873 Agreement
- *“Withdrawn from sale and set apart as a reservation for the”* Tribe. Executive Order of Nov. 8, 1873
- *“The Coeur d’Alene Reservation shall be held forever as Indian Land and as homes for the Coeur d’ Alene Indians . . . and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians”* 1887 Agreement, ratified, §19, 26 Stat. at 1028.

# The Tribe's Federally Reserved Water Rights

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- Consumptive Uses:
  - Domestic, including groundwater; and
  - Agricultural
- Non-Consumptive Uses:
  - Hunting (wildlife habitat);
  - Fishing (fish habitat);
  - Plant gathering (including seeps & springs); and
  - Cultural activities
  - On-reservation instream flow

# Claims the Court Denied

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- Lake level;
- Industrial;
- Commercial;
- Aesthetic uses; and
- Off-reservation instream flow

# Idaho Supreme Court: In Re: CRSBA Case No. 49576

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- Priority Dates for reacquired lands
  - Reacquired lands for consumptive use:
    - Allotted lands
    - Homestead land
  - Reacquired lands for non-consumptive use: time immemorial priority date



# Idaho Supreme Court Holding: In Re: CRSBA Case No. 49576

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- District Court's decision affirmed in part and reversed in part:
  - District Court improperly applied the New Mexico primary-secondary distinction;
    - The district court should have allowed aboriginal purposes of plant gathering and cultural uses under the homeland purpose theory
  - Priority date associated with non-consumptive water rights is time immemorial



# The Tribe's Next Steps

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- In September 2019, the Tribe filed a motion for rehearing on the commercial and industrial claims, this was denied.
- Quantification: quantifying the amount of water that the Tribe needs to fulfill these purposes.
- Settlement?

# Questions?

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