

## **Testimony of Idaho Governor Dirk Kempthorne**

**S.2605**

**The Snake River Water Rights Act of 2004**

**June 20, 2004**

**Senate Indian Affairs Committee**

Mr. Chairman and distinguished members of the Committee, it is with great pride that I submit this testimony in support of your consideration of S. 2605, the Snake River Water Rights Act of 2004.

This bill is the result of a monumental collaborative effort by the State of Idaho with the Nez Perce Tribe, the Bush Administration, our resource industries, and our water user community.

In Idaho, when you can have the intensity of the negotiations we have had involving water over the last few years and leave the table with a deep and abiding respect for each other, that is a great accomplishment.

We certainly have a great respect for the Nez Perce Tribe as our partners in this process, and this agreement represents a remarkable success story.

We announced the agreement on May 15, 2004, and before describing what the agreement means to us, let me provide some background on how we arrived at this moment.

In 1985, the Idaho Legislature laid out a process to adjudicate water rights claims in the Snake River Basin, known as the Snake River Basin Adjudication, or the SRBA.

The first claims in the SRBA were filed two years later.

As you can imagine, adjudicating – or resolving – all of the competing interests for Idaho water has been a monumental task.

In the beginning, there were nearly 150,000 water rights in question. There were contested claims in 38 of Idaho's 44 counties.

After some early jurisdictional issues were resolved in the SRBA, Idaho is now on the verge of adjudicating the water rights of many of our State's most important water users, including several of our Native American governments.

Over those years, much work has been done.

With renewed emphasis, more than 80 percent of the claims were resolved by early 2002, the majority of which have taken place in the last five years.

Add to the mix the settlement of the claims of the Nez Perce Tribe, and we can truly see the light at the end of the tunnel for finishing up this important water adjudication which has received national attention.

The beginning of the water rights settlement now before your Committee began in 1993, when the Nez Perce Tribe filed its claims as part of the adjudication process.

When I became Governor over five years ago, one of my priorities was to tackle these claims head-on and come to a much-needed resolution of them through the SRBA.

I directed my office and the Attorney General's Office to begin negotiations in earnest with all parties.

When we began, our goal was simple.

In the context of negotiating a settlement for the Nez Perce Tribe's water rights, we challenged ourselves to develop a settlement framework that would provide protection not only for the Tribe, but for our most significant water user interests that are impacted by any adjudication of water in our State.

My directive to the State's negotiators to resolve these claims was clear.

Any resolution had to:

- Maintain State sovereignty;
- Protect State water rights; and
- Protect State water law by resisting any federally reserved water rights.

After five years of back-and-forth and, frankly, sometimes intense negotiations, we reached an agreement that accomplishes all those goals.

Water is the lifeblood of Idaho, and harnessing this valuable resource has allowed our State to prosper.

The major interest protected in S. 2605 Idaho for is water.

There is no more important issue to the future of our State than water, and this legislation represents one of the single most critical milestones in our State's 114-year crusade to control its water.

What we achieved in this agreement is:

- Sovereignty;
- Certainty; and

- Opportunity for Idaho and her stakeholders to chart their own destiny under the Endangered Species Act.

This is as it should be.

This agreement protects Idaho's sovereignty by maintaining our system of water law and our existing water rights, which is a process familiar to this Committee in traditional water rights settlements.

It provides certainty for the Nez Perce Tribe by resolving their water rights, as well as certainty for our Idaho water user community and important stakeholders in our natural resource economy because of the protections contained in the agreement for the next thirty years.

It provides opportunity by setting forth a new way of going about protecting endangered species while preserving access to state and private timber lands for our resource-based industries and the rural communities that depend on Idaho's forests.

Importantly, almost 200 million dollars will be provided to the State, Tribe and federal agencies to implement the agreement.

The promise of this agreement is that the farmer in Rexburg, Idaho will know that he won't lose water that he was counting on to irrigate his crops for decades to come.

The logger in Orofino knows he'll have access to State or private timber lands to provide a livelihood for his family, but under a negotiated framework that protects important fish and wildlife.

And the Port of Lewiston will remain a viable gateway to the world for Idaho products for the foreseeable future.

Many individuals and groups have devoted countless hours to get where we are today.

This process has spanned four administrations in Idaho, and two administrations in the White House.

The State of Idaho, the Nez Perce Tribe, numerous federal agencies, water user organizations, including the Committee of Nine, the Federal Claims Coalition, and some of our State's largest and most important irrigation districts came to the table – many times in my office – to overcome their differences and achieve a solution that's best for the entire State.

I know that as you review the agreement you are asked to approve through this legislation, you will find that it could very well be a national model for future settlements of this type.

Now that we have agreed to these terms, there is still more work ahead of us.

This agreement requires your approval.

We are working closely with Senators Craig and Crapo, and I look forward to partnering with them as legislation moves through Congress.

State legislation is also needed, and I intend to have a package of bills drafted and ready for the next session of the Idaho Legislature.

The Nez Perce Tribal government also needs to ratify the agreement.

Once those are completed, all parties will seek approval by the SRBA court.

Mr. Chairman and members of the Committee, this legislation is of no small significance for the State of Idaho and for state, federal and Tribal government-to-government relations.

When we announced the agreement on May 15 in Boise, I paused and observed the parties who joined us on that day.

I saw them enjoying the moment and each other in celebration of what was achieved through this agreement.

These were parties who were once adversaries.

I thought then as I do now that the alternative - several more years of litigation with the prospect that the ultimate outcome would be resolved by the United States Supreme Court - was no alternative at all.

I want to thank Chairman Johnson and his predecessor Sam Penny for their leadership, as well as the commitment from the Nez Perce Tribe to proceed with this settlement.

I greatly appreciate Idaho's water users and countless others who agreed that working together for a solution was a better outcome than litigation and uncertainty.

I want to thank the dedication of the Bush Administration, Secretary Norton and her team, including Ann Klee, also John Keys, Commissioner of the Bureau of Reclamation, Bob Lohn of NOAA Fisheries, Clive Strong from the Idaho Attorney General's Office, as well as Michael Bogert, Jim Yost and Jim Caswell from my Office.

Mr. Chairman and distinguished members, I am grateful for the opportunity to describe for you what we think is one of the most

exciting developments in the Indian water rights area in our country.

Again, I am proud of what we have accomplished and the partnerships that have developed as a result of this process.

We know that the next few weeks bring great challenges if we are to succeed in this legislative session of Congress.

But with great challenges come great opportunities.

I look forward to working with you in the days ahead to provide you and your staff with the information you need to help us achieve the promise of this agreement.

Thank you.

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