



STATE OF IDAHO

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ATTORNEY GENERAL OPINION NO. 88-7

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Per Request for Attorney General's Opinion

QUESTION PRESENTED:

When the boundary of the state of Idaho is defined in part by the Snake River, what is the extent of Idaho's civil and criminal jurisdiction over activities occurring on the river?

CONCLUSION:

When the boundary of the state of Idaho is defined in part by the Snake River, that boundary is located in the middle of the main navigable channel of the river. Idaho's full civil and criminal jurisdiction extends to all activities occurring on the Idaho side of the main navigable channel unless the Idaho legislature has specifically provided otherwise.

ANALYSIS:

You have asked this office to advise you on the extent of Idaho's civil and criminal jurisdiction over activities occurring on the Snake River. Under the tenth amendment to the United States Constitution, powers not delegated to the United States by the Constitution, or otherwise prohibited by it to the states, are reserved to the states. Among the sovereign powers reserved to the states is the power to create a legal code, both civil and criminal, and to enforce that code against individuals and entities

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within the territorial jurisdiction of each respective state. Alfred L. Snapp and Son, Inc. v. Puerto Rico, 458 U.S. 592, 601, 102 S.Ct. 3260, 3265, 73 L.Ed.2d 995, 1003 (1982). Only a legislature can yield a state's sovereign powers. Smith v. State, 64 Wash. 2d 323, 330, 391 P.2d 718, 723 (1964). Further, it cannot be assumed that a state has relinquished its sovereignty. United States v. Brown, 552 F.2d 817, 820 (8th Cir. 1977), cert. denied, 431 U.S. 949, 97 S.Ct. 2666, 53 L.Ed.2d 266 (1977).

Because Idaho's jurisdiction depends upon whether activities occur within the territorial limits of the state, consideration must first be given to understanding the nature of a boundary delineated by an interstate navigable river.

The Snake River marks part of the boundary between the state of Idaho and the states of Washington and Oregon. As described in art. XVII, § 1 of the Idaho Constitution, the boundary formed by the Snake River runs as follows:

Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river

The Organic Act of the Territory of Idaho, ch. 117, 12 Stat. 808, contains identical language. Similarly, the Idaho Admission Bill, ch. 656, 26 Stat. 215, describes the boundary as, "thence down the mid-channel of the Snake River to the mouth of the Clearwater River"

The territorial boundary of Idaho marked by the Snake River has been addressed by the courts. In the early case of Scott v. Lattig, 227 U.S. 229, 33 S.Ct. 242, 57 L.Ed. 490 (1913), the U.S. Supreme Court noted:

Bearing in mind, then, that [the] Snake river is a navigable stream, it is apparent, first, that on the admission of Idaho to statehood the ownership of the bed of the river on the Idaho side of the thread of the stream - the thread being the true boundary of the state - passed from the United States to the state

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227 U.S. at 243, 33 S.Ct. at 244, 57 L.Ed. at 496. More recently, the Court of Appeals for the Ninth Circuit stated that the Idaho boundary is located "in the middle channel of the Snake River." Grand Canyon Dories, Inc. v. Idaho Outfitters and Guides Board, 709 F.2d 1250, 1251 (9th Cir. 1983).

Although the boundary in question has been variously described as located at "the middle channel of the Snake river," "the mid-channel of the Snake River," and the "thread" of the river, it is well settled that where a boundary between states is marked by a navigable river, the boundary line is the middle of the main navigable channel of the river. Iowa v. Illinois, 147 U.S. 1, 8, 13 S.Ct. 239, 241, 37 L.Ed. 55, 57 (1893). See, e.g., Louisiana v. Mississippi, 202 U.S. 1, 49, 26 S.Ct. 408, 421, 50 L.Ed. 913, 930 (1906); Washington v. Oregon, 211 U.S. 127, 134, 29 S.Ct. 47, 48, 53 L.Ed. 118, 119 (1908), aff'd. on rehearing, 214 U.S. 205, 29 S.Ct. 631, 53 L.Ed. 969 (1909); Louisiana v. Mississippi, 466 U.S. 96, 99, 104 S.Ct. 1645, 1647, 80 L.Ed.2d 74, 78 (1984). This rule, known as the rule of the "thalweg," is based upon recognition of the importance of preserving to each state equality in navigation of a river. Arkansas v. Mississippi, 250 U.S. 39, 45, 39 S.Ct. 422, 424, 67 L.Ed. 832, 835 (1919).

Determining that the "live thalweg," or middle of the main navigable channel, is the legal boundary between states does not fix the location of the boundary physically or factually. As the U.S. Supreme Court acknowledged, a boundary defined as the "live thalweg" may vary from time to time, depending upon the course of the river as its bed and channel change due to the gradual processes of erosion and accretion. Louisiana v. Mississippi, 466 U.S. at 100-01, 104 S.Ct. at 1648, 80 L.Ed.2d at 78-79. Case law has established the proposition that the "live thalweg" is defined by the ordinary course of traffic on the river, i.e., by factually establishing the course commonly taken by vessels navigating a particular reach of a river. Id., at 101, 104 S.Ct. at 1648, 80 L.Ed.2d at 79. Thus, the actual physical boundary of the state of Idaho for a particular reach of the Snake River must be determined on a case-by-case basis after consideration of available evidence.

In recognition of the potential conflict, confusion and difficulties attendant to establishing the precise physical location of the state's boundary on the Snake River, the Idaho legislature has authorized certain limited reciprocal agreements with the states of Washington and Oregon. The reciprocal

agreements authorized by the legislature extend only to the right to fish, hunt or trap in the waters or on the islands of the Snake River. See Idaho Code § 36-1001 et seq. The Idaho legislature has not otherwise acted to compromise its exclusive jurisdiction over other activities occurring on the Snake River within the territorial limits of the state. Consequently, persons or entities engaging in other activities on the Idaho side of the Snake River must comply with all applicable laws of the state of Idaho.

AUTHORITIES CONSIDERED:

1. Constitutions

United States Constitution, 10th Amendment.
Idaho Constitution, art. XVII, § 1.

2. Federal Statutes

The Organic Act of the Territory of Idaho, ch. 117, 12 Stat. 808.

Idaho Admission Bill, ch. 656, 26 Stat. 215.

3. Idaho Statutes

Idaho Code § 36-1001 et seq. (Supp. 1988).

4. Federal Cases

Alfred L. Snapp and Son, Inc. v. Puerto Rico, 458 U.S. 592, 601, 102 S.Ct. 3260, 3265, 73 L.Ed.2d 995, 1003 (1982).

Arkansas v. Mississippi, 250 U.S. 39, 45, 39 S.Ct. 422, 424, 63 L.Ed. 832, 835 (1919).

Grand Canyon Dories, Inc. v. Idaho Outfitters and Guides Board, 709 F.2d 1250, 1251 (9th Cir. 1983).

Iowa v. Illinois, 147 U.S. 1, 8, 13 S.Ct. 239, 241, 37 L.Ed. 55, 57 (1893).

Louisiana v. Mississippi, 202 U.S. 1, 49, 26 S.Ct. 408, 421, 50 L.Ed. 913, 930 (1906).

Louisiana v. Mississippi, 466 U.S. 96, 99-101, 104 S.Ct. 1645, 1647-48, 80 L.Ed.2d 74, 78-79 (1984).

Scott v. Lattig, 227 U.S. 229, 243, 33 S.Ct. 242, 244, 57 L.Ed. 490, 496 (1913).

United States v. Brown, 552 F.2d 817, 820 (8th Cir. 1977), cert. denied, 431 U.S. 949, 97 S.Ct. 2666, 53 L.Ed.2d 266 (1977).

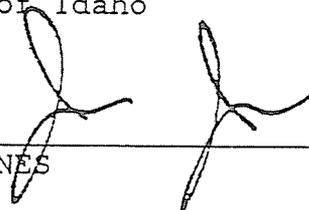
Washington v. Oregon, 211 U.S. 127, 134, 29 S.Ct. 47, 48, 53 L.Ed. 118, 119 (1908), aff'd on rehearing, 214 U.S. 205, 29 S.Ct. 631, 53 L.Ed. 969 (1909).

5. Other Cases

Smith v. State, 64 Wash. 2d 323, 330, 391 P.2d 718, 723 (1964).

DATED this 5th day of December, 1988.

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