

DISTRICT COURT - KRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

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AUG 18 2025

By

Clerk

Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re: The General Adjudication of Rights to) Case No. 89576
the Use of Water from the Kootenai River)
Basin Water System) **JOINT MOTION TO ADOPT PROPOSED**
) **DE MINIMIS PROCEDURES**
)
)
)

The United States of America and the State of Idaho ("Parties") hereby respectfully move the Court to adopt the *de minimis* claim procedures attached hereto as Exhibit A (the "Proposed Procedures") for proceedings in the Kootenai River Basin Adjudication ("KRBA"). The Parties have conferred with the Idaho Department of Water Resources ("IDWR") throughout their negotiations, and IDWR concurs in the Proposed Procedures. As good cause for this request, the Parties note the following:

JOINT MOTION TO ADOPT PROPOSED DE MINIMIS PROCEDURES

1. On January 9, 2025, the Court entered an Order Setting Commencement Hearing and Procedures for Hearing (“Commencement Order”). The Commencement Order notes, *inter alia*, that “commencement of the general adjudication is made conditional on a determination by the district court that it is possible to defer the adjudication of domestic and stock water rights” consistent with Idaho law and with the McCarran Amendment. *Commencement Order* at 2.
2. On March 26, 2025, the Parties filed a Joint Motion for Extension of Time informing the Court that they were engaged in “comprehensive discussion on the commencement of this adjudication and on their respective positions on issues that will be raised in this adjudication.” *Joint Motion* at 2. The Court accordingly amended the scheduling order and re-set the commencement hearing for July 15, 2025.
3. At the July 15 commencement hearing, the Parties informed the Court that they were still engaged in active discussions.
4. The Court ordered the Parties to file a proposal on or before August 18, 2025, in advance of the hearing set for August 19, 2025.
5. The Parties have reached an agreement on *de minimis* procedures that they believe will promote efficiency for parties and the Court. The Proposed Procedures are substantially similar to the procedures to which the Parties stipulated in the Palouse River Basin Adjudication. *See* Stipulation for Establishment of Procedures for the Adjudication of *De Minimis* Domestic and Stock Water Claims, Case No. 00-59576 (Mar. 1, 2017). The modifications to the provisions stipulated in 2017 are primarily to scheduling provisions, and are intended to provide the Court, the Parties, and all future parties to *de minimis* subcases with clarity as to when to file each specific document.

6. The United States maintains that the McCarran Amendment's limited waiver of sovereign immunity requires that all claims be adjudicated within a definite period. The State of Idaho maintains that the deferral provisions instituted in other Idaho adjudications comply with the McCarran Amendment. In the interest of avoiding further litigation, the Parties have agreed to modifications within Paragraph 12 of the Proposed Procedures which contemplate proceeding through a "primary" phase and a "deferred" phase to a Final Unified Decree for the KRBA, with scheduling for those phases taking into account the resource limitations of IDWR.

For the good cause stated above, the Parties respectfully request that the Court approve and enter the Proposed Procedures.

Respectfully submitted this 18th day of August 2025.

UNITED STATES OF AMERICA

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JOINT MOTION TO ADOPT PROPOSED DE MINIMIS PROCEDURES

Energy and Natural Resources Division
Office of the Attorney General

CERTIFICATE OF SERVICE

I certify that on the 18th day of August, 2025, I served true and correct copies of the foregoing JOINT MOTION TO ADOPT PROPOSED *DE MINIMIS* PROCEDURES as follows:

Original via Fax:

Clerk of the Fifth District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, Idaho 83303-2707

Copies via First Class U.S. Mail, pre-paid:

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State of Idaho
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EXHIBIT A

PROPOSED PROCEDURES

DEFERRAL PROCEDURE FOR DE MINIMIS DOMESTIC AND STOCKWATER CLAIMS

1. All claimants of *de minimis* domestic and stockwater uses as defined in Idaho Code § 42-1401A(4) and (11) (hereinafter referred to as *de minimis* claimants) shall be joined as parties in this proceeding (“KRBA”) and will be bound by all decrees entered in this case, including the final decree. Any objection which a *de minimis* claimant or any other claimant may have to any and all claims being adjudicated in this proceeding must be timely raised in this proceeding in accordance with Idaho Code § 42-1412 or be forever barred.

2. *De minimis* claimants may elect to have their claims fully adjudicated now or to postpone (or “defer”) the adjudication of their claims by following the alternative procedure set forth in paragraph 7, *infra*. If a *de minimis* claimant elects to have their domestic or stockwater claims (or both) fully adjudicated now, then the *de minimis* claimant must file a notice of claim as provided by Idaho Code § 42-1409 and pay any filing fees required by Idaho Code § 42-1414. A claimant of a non-*de minimis* use may not rely on the deferral option for multiple *de minimis* claims comprising the non-*de minimis* use. See Idaho Code § 42-111(2).

3. *De minimis* claimants may elect to defer adjudication of their claims to a later time in this proceeding; provided however, each deferred claim when finally adjudicated shall be limited to no more than those amounts and for those uses set forth in Idaho Code § 42-1401A(4) and (11), as enacted by the Act of March 24, 1997, ch. 374, 1997 Idaho Sess. Laws 1192, and as amended by Senate Bill 1083, effective July 1, 2025. Additionally, each *de minimis* claimant must agree to have any domestic or stockwater claim decreed prior to seeking authorization from the Director to change the point of diversion, place of use, purpose of use, or period of use; there shall be no presumption that either the diversion requirement or the actual consumptive use for the water right to be changed was equal to 13,000 gallons per day or any other quantity greater than actual historic use. If this option is elected, a deferred *de minimis* claimant will not be required to file a notice of claim or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

4. Election of this procedure will not result in a loss of such *de minimis* domestic or stockwater claim nor will such deferred *de minimis* claimant be precluded from establishing

the requisite elements of their *de minimis* claim at a subsequent time using the summary procedure herein, subject to any deadlines established pursuant to Paragraph 13, *infra*.

5. As provided by Idaho Code § 42-604, as rights in a basin are adjudicated, the Idaho Department of Water Resources ("IDWR") will establish water districts. If a call is made for water within a water district, the Director will administer all rights within the water district pursuant to Idaho Code § 42-607. A claimant who has elected to defer adjudication of a *de minimis* domestic or stockwater claim will be required to seek a final adjudication of the claim prior to requesting distribution pursuant to Idaho Code § 42-607.

6. In order to obtain an adjudicated water right, a claimant of a deferred *de minimis* domestic or stockwater claim shall file a motion for determination of the claim ("Motion") with this Court.

7. The following provisions are required to institute a determination of a deferred *de minimis* domestic or stockwater claim.

a. The deferred *de minimis* claimant shall file with this Court a Motion with an attached notice of claim on a standardized form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons against whom relief is sought. Service should be made by mailing the documents to the addresses identified for the Director, the State of Idaho, and the United States in Administrative Order I § 7(e).

b. All Motions and notices of claim shall be assigned a unique claim number such that no claim numbers decreed in the KRBA are re-used.

c. The claimant shall also cause to be published a notice of the pendency and purpose of the Motion once a week for not less than three (3) weeks in a newspaper of general circulation in the county in which the point of diversion is located or as otherwise required by the court. After publication is completed, claimant must file an affidavit of publication with the Court.

d. Deferred domestic and stockwater claimants are required to pay their own filing fees as defined in Idaho Code § 42-1414.

e. Unless otherwise ordered, a Motion will be heard pursuant to Docket Sheet procedures, on the third Tuesday of the month following the Motion's appearance on the Docket Sheet. Any Motion filed with this Court before 5 p.m. of the last working day of the month will be placed on the Docket Sheet for that month and interested parties may

appear and oppose the adjudication of the claim. If a Motion is granted, the Clerk of the Court shall forward the check and completed Notice of Claim to IDWR. If a Motion is denied, the Clerk of the Court shall return the claim filing fee.

f. For each claim where the Motion was granted, an affidavit of publication verifying that the notice requirements under section 7(c) have been completed, has been docketed by the Court, and fees are paid, the Director may proceed to investigate the claim in accordance with the provisions of Idaho Code § 42-1410. Notification to the Court that a Director's Report will be prepared shall include an approximation of the time when the Report will be completed, and an estimate of the Director's costs that will be incurred in conducting the examination and in preparing the Report. A deferred *de minimis* claimant shall then be required to advance to the Director the estimated costs of conducting the examination and of preparing the Report. Prior to the filing of the Report with the Court, the deferred *de minimis* claimant shall pay the balance of the Director's verified costs or be refunded any unused estimated costs advanced to the Director. In the event the deferred *de minimis* claimant shall contest the Director's costs, the Court shall then determine a reasonable cost to be paid by the deferred *de minimis* claimant. If IDWR determines that it will not prepare a Director's Report, it shall file a Notice of Non-Examination with the Court.

g. IDWR will submit a Director's Report to the Court with copies to the *de minimis* Claimant, State of Idaho, United States, all parties who appeared at the hearing on the Motion, and all parties against whom relief is sought. After the Director's Report is submitted, the Court will then set objection and response deadlines for further proceedings. Consistent with Idaho Code § 42-1411(6), a party may file an objection between the first date of publication pursuant to 7(c) and the deadline established by the Court. The presumptive deadline for objections shall be sixty (60) days for any Director's Report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report containing more than five thousand (5,000) claims.

h. For those cases in which the Director notifies the Court that the Director does not intend to prepare a Director's Report, the deferred *de minimis* claimant has sixty (60)

days to file a motion with the Court seeking a hearing. Unless otherwise ordered, the motion will be heard pursuant to Docket Sheet procedures, on the third Tuesday of the month following the motion's appearance on the Docket Sheet. Any motion filed with this Court before 5 p.m. of the last working day of the month will be placed on the Docket Sheet for that month. If the Court grants the motion contemplated in this paragraph, any party may file an objection to the claim within forty-five (45) days of the Court's order appearing on the docket. The Court will set deadlines for further proceedings. The Court may order the Director to prepare a Director's Report following a hearing on the deferred *de minimis* claimant's motion. If a claimant does not file a motion, or if the motion is denied, the Court will enter an order dismissing the claim.

i. The Court Clerk shall not accept for filing any document under this procedure unless the claimant certifies on the original document the date and the manner of service of the motion on the State of Idaho, the Director, the United States, and the persons against whom relief is sought.

j. The deferred *de minimis* claimant shall have the burdens of proof and of persuasion in establishing each and every element of their claim.

k. Venue for hearings on deferred domestic and stockwater claims shall be in the county in which the point of diversion is located unless otherwise ordered by this Court.

8. Appeals of any orders or decrees entered under this summary procedure shall be governed by the rules applicable to appeals of orders entered in the KRBA and Idaho Code § 42-1418.

9. Pursuant to 43 U.S.C. § 666 no judgment for costs shall be assessed against the United States.

10. The Court retains continuing jurisdiction over the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred *de minimis* domestic and stockwater claims. The Court on the motion of any party hereto, including a successor-in-interest, may adjudicate a deferred *de minimis* domestic or stockwater claim under the alternative procedure set forth in this Order.

11. The proposed process above meets the requirements of the McCarran Amendment, 43 U.S.C. § 666, because all water users, including those claiming *de minimis* domestic and stockwater rights, will be served and made parties to this adjudication, and will

eventually have their rights adjudicated, either in the primary phase of the proceeding or in a later phase ("the deferred phase") pursuant to the proposed procedures set forth in this Order.

12. Water users who initially elected to defer the filing of a claim for a *de minimis* domestic or stockwater use, and later decide to file a claim after the deadline for timely filing the claim has expired but prior to the entry of a Final Unified Decree or other further order governing procedures for filing *de minimis* domestic or stockwater use, shall follow the same procedures established in the KRBA for filing late notices of claim, provided however, the claim will not be subject to a late filing fee.
13. Following the submittal of IDWR's final KRBA Director's Report from the non-deferred phase, the Court will confer with IDWR as to a feasible timeline to adjudicate all remaining deferred *de minimis* domestic and stockwater rights in the deferred phase. Once IDWR confirms with the Court that it has obtained necessary resources for the KRBA deferred phase, the Court will establish procedures and deadlines for completion of the adjudication and entry of a comprehensive Final Unified Decree for the KRBA. In establishing such procedures and deadlines, the Court will confer with IDWR as to scheduling the deferred phase and seek comments from other adjudication participants.