


SEP 17 2025

By _____ 
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) Case No.: 89576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER) ORDER DENYING JOINT MOTION TO
FROM THE KOOTENAI RIVER) ADOPT PROPOSED DE MINIMIS
BASIN WATER SYSTEM) PROCEDURES
)
)
)
_____)

I.
BACKGROUND

On January 3, 2025, the State of Idaho filed a Petition seeking the commencement of a general adjudication of all rights arising under state or federal law to the use of surface and ground waters from the Kootenai River basin water system. The Petition provides that the commencement of the general adjudication is made conditional upon a determination by the Court that it is possible to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, within the terms of the McCarran amendment. The Court will collectively refer to these domestic and stock water rights as “de minimis rights.”

In its Amended Notice of Filing Petition to Commence, the State proposes an optional process to defer the adjudication of de minimis rights in this proceeding.¹ The Court will refer to that process herein as the “optional deferral process.” A copy of the optional deferral process is attached as Exhibit A. Under that process, holders of de minimis rights will be joined as parties

¹ A copy of the Amended Notice of Filing Petition to Commence is attached as Exhibit 1 to the State’s Prehearing Statement filed on June 26, 2025.

to the adjudication and will be bound by any order or decrees entered in the adjudication. However, once joined as a party they may elect to defer the filing and adjudication of their de minimis rights.

In practical terms this means as follows. Following the commencement of the Kootenai River Basin Adjudication (“KRBA”), the Court will set deadlines for the filing of state law-based water right claims. De minimis water rights are state law-based water rights. Under the optional deferral process, the holder of a de-minimis right may file a water right claim prior to the applicable deadline for the filing of state law-based claims, or may elect to defer the filing and adjudication of that claim. The election to defer will not result in the loss of the de minimis right. The optional deferral process does not expressly contemplate an end to the right to defer.² It contains no requirement that the holder of a de minimis water right file a claim for the right or lose it.

The optional deferral process is the same as, or is substantially similar to, the deferral processes previously adopted by the Court in the following general adjudications: (1) Snake River Basin Adjudication (“SRBA”), (2) Coeur d’Alene-Spokane River Basin Adjudication (“CSRBA”), (3) Palouse River Basin Adjudication (“PRBA”), (4) Clark Fork-Pend Oreille River Basins Adjudication (“CRPRBA”), and (5) Bear River Basin Adjudication (“BRBA”). In those adjudications, the Court found the optional deferral process satisfies the terms of the McCarran Amendment and is consistent with Idaho’s adjudication statutes.

On August 18, 2025, the State of Idaho and the United States filed a Joint Motion to Adopt Proposed De Minimis Procedures. In the Joint Motion, the State and the United States propose an alternative process to defer the adjudication of de minimis rights. The Court will refer to this process herein as the “alternate deferral process.” A copy of the alternate deferral process is attached as Exhibit B. The alternate deferral process expressly contemplates a two-phase adjudication consisting of a “non-deferred phase” and a “deferred phase.” Under this process, the holder of a de minimis right may elect to defer the adjudication of that right during the “non-deferred phase,” but may not elect to defer during the “deferred phase.” In this regard, the alternate deferral process expressly contemplates an end to the right to defer:

² That said, the owner of a de minimis right who elects to defer filing will be required to have the right adjudicated prior to (1) the water right being distributed by a watermaster (Idaho Code § 42-607) and/or (2) before an application for change of the water right may be filed with IDWR (Idaho Code § 42-222).

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.

Joint Motion to Adopt Proposed *De Minimis* Procedures, Ex. A. ¶13 (Aug. 18, 2025). In short, the "deferred phase" will include a requirement that the holder of a *de minimis* water right must file a claim for the right by a date certain in the adjudication or lose it. The alternate deferral process has not previously been adopted by the Court in any prior general adjudication.

A hearing on the State's Petition was held on August 19, 2025. The State and the United States submitted their Joint Motion to the Court one day prior. At the hearing, the Court informed the parties it was not in a position to hear the State's Petitioner and/or the Joint Motion, as it needed to further consider the alternate deferral process. The Court therefore vacated the hearing on the State's Petition and set a status conference in this matter for September 16, 2025. At that hearing, the Court informed the parties that in an exercise of its discretion it would decline to adopt the alternate deferral process set forth in the Joint Motion. This Order follows that hearing.

II.

ANALYSIS

In the Joint Motion, the State and the United States request that the Court adopt the alternate deferral process in commencing the KRBA. Whether to adopt the alternate deferral process is an issue left to the Court's discretion. *See e.g.*, Memorandum Decision on Optional Deferral Process, Twin Falls County Case No. 69576, p. 8 (June 15, 2021) (stating "the McCarran Amendment leaves it to the discretion of an adjudication court to determine how to structure and process an adjudication proceeding"). For the reasons set forth herein, the Court in an exercise of its discretion declines to adopt the alternate deferral process.

A. De minimis water right holders in the Kootenai River basin should be treated the same as de minimis water right holders in the rest of the State.

In 2024, the Idaho Legislature authorized IDWR to petition the Court to commence the KRBA to adjudicate water rights in the Kootenai River basin. I.C. § 41-1406D. The KRBA is the latest in a series of six general adjudications authorized by the Idaho Legislature covering the entire State of Idaho. The five adjudications preceding the KRBA include the SRBA, CSRBA, PRBA, CFPRBA, and BRBA. The geographic boundaries of these five adjudications cover the adjudication of water rights in all areas of the state except for the Kootenai River basin. Once the KRBA is commenced, all geographic areas of the state will be covered by one of the six adjudications.

To date, de minimis water right holders in the rest of the state, aside from the Kootenai River basin, have been treated uniformly in the respective adjudications. In each of the five preceding adjudications, the Court has adopted the optional deferral process to govern the deferral of de minimis rights. Under that process, de minimis water right holders are joined as parties to the adjudication but may elect to defer the filing and adjudication of their water rights. There is no requirement that de minimis water right holders file claims for their rights. And, the election to defer does not result in the loss of a de minimis right. The result is that a de minimis water right cannot be lost via operation of law in the SRBA, CSRBA, PRBA, CFPRBA, or BRBA on the basis that it is not claimed those adjudications.

The same cannot be said of the alternate deferral process. Under that process, the holder of a de minimis right may elect to defer the adjudication of that right only during the “non-deferred phase.” However, that right to defer ends under the “deferred phase.” If the holder of a de minimis right fails to file a claim for his right in the deferred phase he will lose it via operation of law. I.C. § 42-1420. The result is that the holders of de minimis water rights in the Kootenai River basin may lose their de minimis water rights through the adjudication process by failing to file the same, when the holders of such rights in the rest of the state may not. The Court declines to advance this disparate result.

The Court is unaware if or when the right to defer will end in the other adjudications. At this point, there has been no determination in the SRBA, CSRBA, PRBA, CFPRBA, or BRBA that the right to defer in those adjudications will end. At this point, de minimis water right

holders in those adjudications may essentially elect to defer indefinitely without threat of losing their rights due to non-filing. *See e.g.*, Twin Falls County Case No. 49576, Memorandum Decision on Petition to Commence Coeur d'Alene-Spokane River Basin General Adjudication, p.16 (Nov. 12, 2008) (stating “[a]lthough all *de minimis* domestic and stockwater claimants will be joined as parties from the outset and bound by any decrees issued in adjudication, the actual filing of *de minimis* claims can potentially be deferred indefinitely.”).

The Court declines to create a situation where water right holders in one area of the state may lose their *de minimis* rights due to non-filing while water right holders in other areas of the state may not. The adjudication statutes enacted by the Idaho Legislature are essentially uniform. They do not contemplate different adjudication processes for different areas of the state (for instance, the filing fees for water right holders across all the adjudications have been kept uniform and the adjudication court across all adjudications has been kept uniform).³ They certainly do not contemplate *de minimis* water right holders in one area of the state losing their rights due to non-filing, while *de minimis* water right holders in another area of the state cannot. Were this Court to adopt the alternate deferral process in the KRBA, the only water right holders in the state who could face losing their *de minimis* rights through the adjudication process by failing to file the same at this time would be those located in the Kootenai River basin.

The Court notes that the United States has filed a motion to adjudicate deferred *de minimis* water rights in the SRBA. That motion is essentially a motion to end the right to defer in the SRBA. The motion is presently stayed by request of the parties and is currently pending unresolved. The Court cannot predetermine the issues raised in that motion. It can only note that at this time the ability to defer the filing a *de minimis* water right in the SRBA continues. With respect to the CSRBA, PRBA, CRPRBA, and BRBA, there has been no request by any party to end the right to defer in those adjudications. As a result, the right to defer in those adjudications continues.

For the reasons stated herein, the Court declines to treat *de minimis* water right holders in the Kootenai River basin differently than *de minimis* water right holders in the rest of the State.

³ All six adjudication have the same fee schedule, meaning that filing fees have not increased or changed for any water user in the state since the SRBA was authorized 1987. As a condition of proceeding with the North Idaho Adjudications assurances were made to the Idaho Legislature that water users in the North Idaho Adjudications would not be treated differently than those water users in the SRBA.

Therefore, the Court in an exercise of its discretion declines to adopt the alternate deferral process in the KRBA. It follows the Court will deny the Joint Motion.

B. The Court declines to adopt a condition precedent to entry of the final unified decree in the KRBA over which it has no control.

The alternate deferral process requires the Court to accept a condition precedent to entry of the final unified decree in the KRBA. Once the final director's report is issued, Paragraph 13 of the alternate deferral process requires the Court to "confer with IDWR as to a feasible timeline to adjudicate all remaining deferred *de minimis* domestic and stockwater rights in the deferred phase." Joint Motion to Adopt Proposed *De Minimis* Procedures, Ex. A. ¶13 (Aug. 18, 2025). Then, the Court can establish procedures for, and enter, the final unified decree only after "IDWR confirms with the Court that it has obtained necessary resources for the KRBA deferred phase." *Id.* The Court has no control over if or when such resources will be made available to the Department. The Court in an exercise of its discretion declines to adopt a condition precedent to entry of the final unified decree in the KRBA over which it has no control. It could unduly delay entry of the final unified decree with respect to non-*de minimis* rights, which could in turn unduly delay the active administration of such rights pursuant to the decrees entered in the adjudication. Moreover, no such requirement regarding the procurement of resources by the Department exists in the SRBA, CSRBA, CRPRBA, or BRBA as a condition precedent to the entry of final unified decrees in those adjudications.⁴ It follows the Court will deny the Joint Motion.

C. Legal issues pertaining to the deferral of *de minimis* rights are presently pending unresolved in the SRBA.

On November 15, 2021, the United States filed a motion to adjudicate deferred *de minimis* water rights in the SRBA. That motion is essentially a motion to end the right to defer in the SRBA. The motion raises legal issues pertaining to the deferral of *de minimis* rights in that adjudication. These include whether ending the deferral of *de minimis* rights in the SRBA is consistent with the adjudication statutes as well as Idaho's permitting and licensing statutes

⁴ Indeed, the Final Unified Decree was entered in the SRBA on August 26, 2014.

governing de minimis water use. They also include whether the Court has the jurisdiction and authority under the adjudication statutes to decree de minimis rights disallowed in the SRBA.

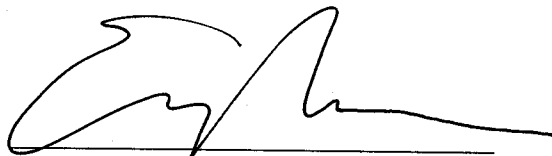
The United States' motion is presently stayed by request of the parties and is currently pending unresolved. The issues raised by the United States' motion in the SRBA are issues of first impression. At this time, there are approximately 38 parties in the SRBA that have filed notices of appearances to participate in the proceedings before this Court on the United States' motion. The Court finds the alternate deferral process proposed by the State and the United States in the KRBA raise issues that overlap with those raised and pending unresolved in the SRBA. Most of the parties participating in the proceedings on the United States' motion in the SRBA are not a party to this proceeding. Rather than address any overlapping issues in the KRBA, it is the preference of the Court to address issues pertaining to ending the right to defer in the proceeding on the United States' motion in the SRBA. The outcome of that proceeding may establish precedent and depending on the outcome, a uniform process for adjudicating deferred claims throughout the state. Moreover, the adjudication of deferred claims is also dependent on the Legislature approving the necessary resources and may also require statutory changes with respect to de minimis rights. For this reason, the Court in an exercise of its discretion declines to adopt the alternate deferral process. It follows the Court will deny the Joint Motion.

III.

ORDER

THEREFORE, IT IS ORDERED that the Joint Motion filed by the State and the United States is hereby denied.

DATED: 9/17/25.



ERIC J. WILDMAN
Presiding Judge
Kootenai River Basin Adjudication

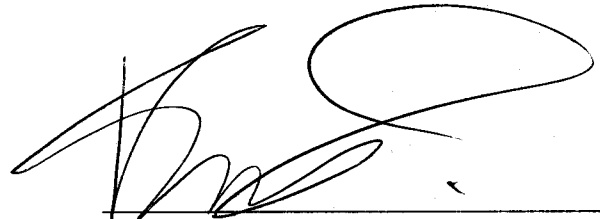
CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the Order Denying Joint Motion to Adopt Proposed De Minimis Procedures were mailed on September 17, 2025, by first-class mail to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resources Div.
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611



Valerie McCoy
Deputy Clerk