

SEP 19 2025

By


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) AMENDED ORDER DENYING JOINT
FROM THE KOOTENAI RIVER) MOTION TO ADOPT PROPOSED DE
BASIN WATER SYSTEM) MINIMIS PROCEDURES¹
)
)
)
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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.² 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 On September 17, 2025, the Court entered an Order Denying Joint Motion to Adopt Proposed De Minimis Procedures. That Order referred to “Exhibit A” and “Exhibit B” attached thereto. Due to clerical error, those Exhibits were not attached to the Order. This Amended Order is being issued for the sole purpose of including those missing Exhibits.

² 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.³ 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:

³ 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).⁴ 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.

⁴ 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.⁵ 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

⁵ 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.

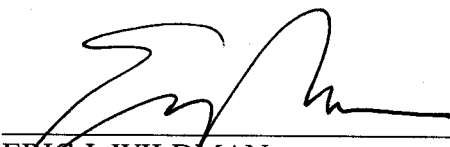
The United States' motion is presently stayed by request of the parties and is currently pending unresolved. The issues raised by the United States' motion in the SRBA are issues of first impression. At this time, there are approximately 38 parties in the SRBA that have filed notices of appearances to 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: 9/19/25.


ERIC J. WILDMAN
Presiding Judge
Kootenai River Basin Adjudication

6. Fax filing is also available pursuant to Rule 5(d)(3) of the Idaho Rules of Civil Procedure, though faxed documents are limited to ten (10) pages, including attachments and exhibits. Documents can be fax filed at (208) 736-2121.
7. The district court may relieve any attorney or any *pro se* litigant from the requirements of the *Order* for good cause shown.

Copies of the *Petition* and the *Order* may be obtained at <https://idwr.idaho.gov/water-rights/adjudication/KRBA.html> or from any office of the Idaho Department of Water Resources (IDWR) or from the district court.

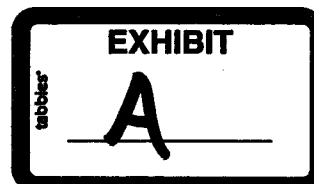
PROPOSED PROCESS TO DEFER THE ADJUDICATION OF DOMESTIC AND STOCK WATER RIGHTS:

All claimants of *de minimis* (small) domestic and/or stock (D&S) water rights as defined in Idaho Code § 42-1401A(4) and (11) shall be joined as parties in this proceeding and shall be bound by all decrees entered in this case, including the final decree. Any objection to any and all claims being adjudicated in this proceeding, including those of a D&S claimant, must be timely raised in accordance with Idaho Code § 42-1412 or be forever barred.

Water users of D&S rights may elect to file a Notice of Claim at the time of commencement of the Kootenai River Basin Adjudication or defer (postpone) the filing. If a D&S claimant elects to have the claim adjudicated now, then the D&S claimant must file a Notice of Claim (Idaho Code § 42-1409) and pay any fees (Idaho Code § 42-1414). Deferral will not result in a loss of the D&S water right nor will a D&S claimant be prevented from making a D&S claim in the future. The owner of a D&S water right who chooses to defer the filing of a Notice of Claim will be required to have the water right adjudicated prior to the water right being distributed by a watermaster (Idaho Code § 42-607) and/or before an application for change of the water right may be filed with IDWR (Idaho Code § 42-222).

Water right holders who choose to delay filing on D&S water rights will be required to file a motion for determination of the use (motion), with an attached notice of claim, in order to obtain an adjudicated water right. Notice of the motion and information describing the claim must be published by the claimant for at least three (3) weeks in a newspaper of general circulation in the county where the point of diversion is located. In addition, claimant must serve the motion and claim on the Director, the State of Idaho, the United States, and persons against whom relief is sought. Service upon the United States must be via certified mail to the United States Attorney for the District of Idaho and the United States Attorney General in Washington, D.C.

Any party can object to the claim by filing written notice of the objection with the district court within forty-five (45) days from the date of the first publication of the notice. A copy of the objection shall be served on the State of Idaho, Director, United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.



Within thirty (30) days of the objection deadline, the Director will file a notice with the court stating whether the Director will examine the deferred D&S claim and whether the Director will prepare a report on the claim to the district court. The Director's notice will contain the Director's estimated costs, due from the claimant, for examination of the claim and preparation of the report. The notice will also contain the Director's approximation of time for filing the report. Prior to filing the report, the D&S claimant shall pay the balance of the Director's costs or be refunded by the Director any unused advanced estimated costs. If the D&S claimant contests the Director's costs, the district court shall determine a reasonable cost to be paid by the claimant. Deferrable domestic claimants are also required to pay their own filing fees. The Director will investigate the claim and submit the report to the court with copies to the State of Idaho, United States, all parties who filed objections, and all parties against whom relief is sought. The court will then set objection and response deadlines and set a hearing (Idaho Code § 42-1412).

If the Director notifies the court that the Director does not intend to prepare a report, then the district court will proceed with a hearing and any party who timely objected may appear and challenge the D&S motion and claim. The district court may order the Director to prepare a report after a hearing on the motion and D&S claim.

Proof of service is required for any motion under this deferred procedure. Claimant must certify the date and manner of service of the motion on the State of Idaho, the Director, the United States, and persons against whom relief is sought.

Appeals of any orders or decrees entered under the deferred procedure are governed by the rules applicable to appeals of orders in the Kootenai River Basin Adjudication.

The district court retains continuing jurisdiction of the subject matter in this proceeding and the parties to the proceeding for the purpose of adjudicating deferred D&S claims.

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* D&S rights, will be served and made parties to this adjudication, and will eventually have their rights adjudicated, either in this phase of the proceeding or pursuant to the proposed procedures set forth in this Notice.

Mathew Weaver, Director
Idaho Department of Water Resources

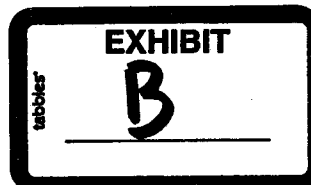
DEFERRAL PROCEDURE FOR DE MINIMIS DOMESTIC AND STOCKWATER CLAIMS

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 1 § 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.

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the AMENDED ORDER DENYING JOINT MOTION TO ADOPT PROPOSED DE MINIMIS PROCEDURES¹ were mailed on September 19, 2025, by first-class mail to the following:


U S DEPARTMENT OF JUSTICE
ENVIRO & NAT'L RESOURCES DIV
PO BOX 7611
BEN FRANKLIN STATION
WASHINGTON, DC 20044-7611

WILLIAM BARQUIN
KOOTENAI TRIBE OF IDAHO
1000 SW BROADWAY, STE 1060
PORTLAND, OR 97205

THOMAS MURPHY
NATIVE AMERICAN RIGHTS FUND
250 ARAPAHOE AVE
BOULDER, CO 80302

CHIEF NATURAL RESOURCES DIV
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



Valerie McCoy
Deputy Clerk