

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

FEB 13 2026

By \_\_\_\_\_  
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**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 ) **UNITED STATES' BRIEF IN**  
 ) **OPPOSITION TO PETITION FOR**  
 ) **COMMENCEMENT**

The State of Idaho ("State") has petitioned to commence the Kootenai River Basin Adjudication ("KRBA"), Idaho's final general stream adjudication. The petition contemplates "the deferral of the adjudication of domestic and stock water rights," Pet. to Commence Kootenai River Basin Adjudication ¶ 15 (Jan. 3, 2025) ("Petition"), and seeks to join the United States "in its proprietary, governmental, trustee, and representative capacities," *id.* ¶ 5. The United States opposes the petition for commencement on the limited ground that a permanent right to defer *de minimis* claims, as described in the Court's September 19, 2025 order, takes the KRBA outside the McCarran Amendment's limited waiver of sovereign immunity. Am. Order Den. Joint Mot.

to Adopt Proposed De Minimis Procedures, Case No. 89576 (Sep. 19, 2025) (“Order”).

The McCarran Amendment, 43 U.S.C. § 666, waives sovereign immunity only for a “comprehensive water right adjudication.” *United States v. Idaho ex rel. Dir., Idaho Dep’t of Water Res.*, 508 U.S. 1, 3 (1993). The KRBA, unlike Idaho’s five previously commenced adjudications, will be the first to be commenced in which the Court has stated that *de minimis* claimants have a “right” to defer their claims, potentially permanently. *See* Order. Permanent deferral is a change in the law and cannot be reconciled with the McCarran Amendment’s comprehensiveness requirement. Because the Idaho legislature has required adjudications to commence in compliance with the McCarran Amendment, the KRBA cannot be commenced.<sup>1</sup>

## **I. Background**

### **a. Previous Deferral Proceedings**

#### **i. SRBA**

Deferral of *de minimis* claims originated early in the Snake River Basin Adjudication (“SRBA”) in a stipulation between the United States and State. On December 20, 1988, the United States and the State filed a Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stockwater Claims. *See* Ex. 1 (“SRBA Stipulation”). The SRBA Stipulation explained that it was intended to “streamline the instant phase of the adjudication,” ¶ 4, and provided that “all water users. . . will eventually have their water rights adjudicated,” *id* (emphasis added). The Court adopted the SRBA Stipulation. *See* Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses (Jan. 17, 1989) (“SRBA 1989 Order”). In its order, the Court contemplated that claimants could

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<sup>1</sup> The United States does not otherwise oppose commencement of the KRBA and supports concluding Idaho’s adjudications on a timely basis. Nor does the United States oppose a temporally-limited deferral process which still assures the complete adjudication of all claims.

“postpone the adjudication of their claims,” *id.* ¶ 2, and that they “may elect to defer adjudication of their claims to a later time in this proceeding,” *id.* ¶ 3 (emphasis added), but did not contemplate that such claims might never be adjudicated.

In 1995, the Court entered SRBA Administrative Order 10 (“AO10”), which modified *de minimis* claim procedures. AO10 provided that “[a]t some point in this SRBA proceeding, IDWR will be required to file a director’s report including all deferred Notices of Claim for domestic and stockwater uses.” *Id.* at 2–3 (emphasis added). Again, the Court contemplated deferral as a temporary scheduling mechanism which would conclude with all claims filed and reviewed, not an unlimited right. Finally, in 2012, as proceedings on non *de minimis* claims in the SRBA wound down, the Court issued an order on *de minimis* claims, which described how “claims that were not required to be immediately adjudicated in the SRBA” would be handled going forward. Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims, Case No. 39576 at 2 (Jun. 28, 2012) (emphasis added).

## ii. CSRBA

The United States and the State similarly entered into a stipulation regarding deferral in the Coeur d’Alene-Spokane River Basin Adjudication (“CSRBA”). *See* Ex. 2. The CSRBA stipulation was substantively similar to the SRBA stipulation, and included a term whereby the United States and State agreed that the proposed procedures complied with the McCarran Amendment “because all water users, including those claiming *de minimus* [sic] domestic and stock water rights . . . will eventually have their rights adjudicated, either in this phase of the proceeding or pursuant to the procedures set forth in this stipulation.” *Id.* ¶ 4.

The Coeur d’Alene Tribe contested commencement, arguing that the proposed deferral process was unlawful. The Court approved the CSRBA stipulation, holding for the first time that

deferral was compliant with the McCarran Amendment. *See* Mem. Dec. on Pet. to Commence [CSRBA], Case No. 49576 (Nov. 12, 2008).<sup>2</sup> However, the CSRBA Court did so on a limited basis, explaining that “no authority exists supporting a threshold quantity regarding when a claim can be excluded from a general adjudication while the requirements of the McCarran Amendment are still met.” *Id.* at 21. The Court further noted that “although the proceedings for adjudicating a deferrable claim may take place in a different stage or phase of the adjudication, the proceedings for the claim will still be part of and incorporated into the same adjudication. *Id.* at 23; *see also id.* at 24–25 (“Although the claims may be adjudicated at a later time, they will still be adjudicated within the confines of the same single suit.”).

### **iii. PRBA**

In the Palouse River Basin Adjudication (“PRBA”), the United States and the State again entered a deferral stipulation. *See* Ex. 3. The PRBA stipulation was substantively similar to the prior two stipulations and again included a provision that it was entered to accommodate the State’s “desire to streamline the instant phase of the adjudication”, and that all water users “will . . . eventually have their rights adjudicated, either in this phase of the proceeding or pursuant to the procedure set forth in this stipulation.” *Id.* ¶ 4.

### **iv. CFPRBA & BRBA**

In the Clark Fork-Pend Oreille Basin Adjudication (“CFPRBA”) and Bear River Basin Adjudication (“BRBA”) which were commenced together, the United States and State did not enter a deferral stipulation. Instead, the United States contested commencement. The Court

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<sup>2</sup> The Court noted in dicta that “filing of *de minimis* claims can potentially be deferred indefinitely.” CSRBA Order at 16. This is not binding today for three reasons. First, the Court did not definitively determine that deferral could be indefinite, just that it was a possible interpretation. Second, the Court was interpreting the language of the CSRBA stipulation and associated proposed deferral procedures, not an underlying principle of law. *See, e.g., id.* n.6. Third, and most importantly, the dicta is substantively not supported by the stipulation, which was clear that “all water users . . . will eventually have their rights adjudicated.” The stipulation did not contemplate indefinite deferral.

upheld the optional deferral process as compliant with the McCarran Amendment along similar lines as in 2008 in the CSRBA. *See* Mem. Dec. on Optional Deferral Process, Case No. 69576 (Jun. 15, 2021), at 4 n.8 (noting that the deferral process was not distinguished from the CSRBA); *see also* Mem. Dec. on Optional Deferral Process, Case No. 79576 (Jun. 15, 2021) (adopting CFPRBA order). The Court noted that all water users would be joined to the adjudication and bound by adjudication orders, and that “[t]he plain language of the Petition contemplates that all de minimis rights will be adjudicated either through the standard adjudication process or through the optional deferral process.” *Id.* at 9 (emphasis added). The Court further noted that it viewed deferral “as issues of case management, not issues of jurisdiction” which are left to the Court’s discretion. *Id.*

## **b. Legal Standards**

### **i. Sovereign Immunity**

“It is elementary that the United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit. A waiver of sovereign immunity cannot be implied but must be unequivocally expressed.” *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (citation modified). Any partial waiver of sovereign immunity “must be strictly construed in favor of the United States.” *Ardestani v. I.N.S.*, 502 U.S. 129, 137 (1991).

### **ii. McCarran Amendment**

The McCarran Amendment is one such limited waiver of sovereign immunity. The McCarran Amendment allows a state to join the United States to its water adjudication, subject to certain limitations; of relevance here, the adjudication must be comprehensive of all rights on a given stream system. *See United States v. State of Or.*, 44 F.3d 758, 766 (9th Cir. 1994).

Idaho's general stream adjudications are required to comply with the McCarran Amendment, *see, e.g.*, I.C. § 42-1406D(1) (authorizing petition "to commence an adjudication within the terms of the McCarran amendment, 43 U.S.C. 666, of the water rights from surface water and ground water sources in the Kootenai River basin"); *see also* I.C. § 42-1401A(5) (defining general adjudication as "an action both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system") (emphasis added).

In interpreting the McCarran Amendment, the Supreme Court has stated that "[t]he clear federal policy evinced by that legislation is the avoidance of piecemeal adjudication of water rights in a river system." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976). The Supreme Court elaborated that:

This concern is heightened with respect to water rights, the relationships among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are best conducted in unified proceedings.

*Id.* An adjudication is comprehensive where "all existing water rights claims in the river system will have been determined when the adjudication is finished." *State of Or.*, 44 F.3d at 768 (emphasis added). Put simply, the "McCarran Amendment requires the adjudication of the rights of all those who use the water of a river system within a state." *In re Snake River Basin Water Sys.*, 115 Idaho 1, 9 (1988).

## **II. Argument**

The permanent deferral of claims does not meet the McCarran Amendment's comprehensiveness requirement, and accordingly, the United States cannot be joined and the KRBA cannot be commenced. In prior proceedings, the Court has stretched the boundaries of the

United States' waiver of sovereign immunity by authorizing deferral of *de minimis* claims.

However, the Order stretches the waiver past its breaking point by, for the first time, describing deferral as a "right" held by a claimant, rather than a case management tool controlled by the Court.

**a. The Order Authorizes Permanent Deferral.**

**i. The McCarran Amendment Does Not Allow Exclusion of a Class of Claims.**

For a state court general stream adjudication to include the United States, it must be comprehensive of "rights to the use of water of a river system or other source." 43 U.S.C. § 666(a); *see also United States v. State of Or.*, 44 F.3d 758, 766 (9th Cir. 1994) (Congress limited its waiver to "comprehensive water right adjudication[s]") (quoting *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 3 (1993)). *De minimis* water rights are still rights to use the water of a river system or source and accordingly, must be adjudicated for the KRBA to be comprehensive.

In prior adjudications, the Court has acknowledged the comprehensiveness requirement and reasoned that it is met even with deferral because all water users will 1) be joined to the adjudication and 2) be bound by the adjudication court's orders. *See, e.g.*, Mem. Dec. on Pet. to Commence [CSRBA] at 23. However, a third component has always been implicit: that 3) all the water users' claims would eventually be adjudicated. *See, e.g., id.* at 23 ("[A]lthough the proceedings for adjudicating a deferrable claim may take place in a different stage or phase of the adjudication, the proceedings for the claim will still be part of and incorporated into the same adjudication."); *see also* SRBA 1989 Order ¶ 2 (stating claimants may "postpone the adjudication of their claim"); *id.* ¶ 3 (stating claimants "may elect to defer adjudication of their claims to a later time in this proceeding"). Today, the Court instead describes deferral as a

“right” held by a water user that the Court is “unaware if or when [it] will end.” Order at 4 (emphasis added).

The Idaho Supreme Court in *In Re SRBA* was clear: to exercise jurisdiction over the United States “requires the adjudication of the rights of all those who use the water of a river system within a state.” *In re Snake River Basin Water Sys.*, 115 Idaho 1, 9 (1988) (emphasis added); *see also Idaho Dep’t of Water Res. v. United States*, 122 Idaho 116, 120 (1992), *rev’d on other grounds sub nom. United States v. Idaho ex rel. Dir., Idaho Dep’t of Water Res.*, 508 U.S. 1 (1993) (“An adjudication contemplates more than just determining those rights acquired by appropriation, but all rights, however acquired or reserved, to use water from a water system.”) (emphasis added). The McCarran Amendment requires more than comprehensive joinder and the adjudication of some subset of claims; it requires comprehensive adjudication.

## **ii. Permanent Deferral Goes Beyond Colorado’s Sequencing.**

In the CSRBA, the Court analogized deferral to Colorado’s system of ongoing adjudication, which the Supreme Court determined was compliant with the McCarran Amendment. *See* Mem. Dec. on Pet. to Commence [CSRBA] at 24 (describing deferral as “no different” from the Colorado system); *see also Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976). However, the Supreme Court’s approval of Colorado’s system does not provide an exception which would fit permanent deferral, and is easily distinguishable from Idaho’s system, because Colorado does not allow both deferral and maintenance of historic priority. *See, e.g., In re Snake River Basin Water Sys.*, 115 Idaho 1, 9 (1988) (describing “unique system of water adjudication that exists in Colorado”).

While Colorado does engage in ongoing adjudication month-by-month, it does not engage in ongoing adjudication of *historic* uses of water. Instead, Colorado utilizes the



postponement doctrine, whereby a claimant's "failure to adjudicate the rights results in the rights being junior to rights previously adjudicated." *United States v. Bell*, 724 P.2d 631, 642 (Colo. 1986). Accordingly, a claimant's priority is the year they filed in the adjudication, not the year they initiated beneficial use; "regardless of the date of appropriation, water rights or conditional water rights decreed in one year are necessarily junior to all priorities awarded in decrees in prior years." *Id.* (citing C.R.S. § 37-92-306).<sup>3</sup> Colorado claimants cannot both defer filing their claim and maintain their historic priority date, which provides certainty to all water users. An ongoing adjudication of new claims is a logical extension of existing adjudications to handle new appropriations, while a system with an indefinite right to defer filing without any associated loss of priority is not 'inclusive in the totality' and is instead exactly the sort of piecemeal adjudication which the McCarran Amendment does not allow.

**b. Permanent Deferral is a Change in the Law.**

In the CFPRBA, the Court noted that the United States did not "distinguish the deferral process proposed in this proceeding from that proposed and adopted by the Court in the CSRBA," Mem. Dec. on Optional Deferral Process, Case No. 69576, at 4 (Jun. 15, 2021), and further, that there had been no change in "any other law applicable to the United States' waiver of sovereign immunity," *id.* Accordingly, the Court declined to revisit its prior decisions on deferral. Here, while the State's proposal for deferral is the same, the law has materially changed. In the CFPRBA, deferral was a case management tool which the Court could end by order at any time; in the KRBA, it is a right of the claimant that the Court may not be able to disturb. This materially changes the nature of deferral. As described *supra*, the primary purpose

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<sup>3</sup> Colorado can conduct adjudications in this manner because the first statute requiring adjudication was passed in 1879. See *S. Adams Cnty. Water & Sanitation Dist. v. Broe Land Co.*, 812 P.2d 1161, 1166 (Colo. 1991). Accordingly, failure to file resulted in loss of priority, and the adjudication today is primarily of new uses. Colorado's adjudications are thus in a materially different posture than Idaho's.

of the McCarran Amendment is the avoidance of piecemeal litigation of water rights; this is accomplished by litigating all water right claims. Certainly, sequencing of claims was necessary in the SRBA, which decreed 158,000 claims across 53 million acres. Even in a proceeding as large as the SRBA, however, the stipulating parties contemplated that all claims would be adjudicated, just in phases.

The Order considered a proposal for litigating deferred claims submitted jointly by the State and the United States. *See* Joint Mot. to Adopt Proposed *De Minimis* Procedures, Case No. 89576, Ex. A (Aug. 18, 2025) (“Stipulation”). The relevant provision contemplated an end to deferral, after further proceedings before the Court:

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.

Stipulation ¶ 13. While the Stipulation was certainly more specific, it was broadly aligned with the previous stipulations in the SRBA, CFPRBA, and PRBA in contemplating multiple phases and the eventual adjudication of all claims. The difference is that in considering the Stipulation, the Court identified, for the first time, a “right” to defer. *See, e.g.*, Order at 2 (“expressly contemplate an end to the right to defer”) (emphasis added); *see also id.* at 3 (same); *id.* at 4 (“that right to defer ends”); *id.* (“the Court is unaware if or when the right to defer will end”) (emphasis added); *id.* at 5 (“to end the right to defer in those adjudications”).

The Order describes that under the procedures adopted in the ongoing adjudications, a “de minimis water right cannot be lost via operation of law . . . on the basis that it is not claimed

[in] those adjudications.” *Id.* at 4. Further, the Court notes it is “unaware if or when the right to defer will end in the other adjudications.” *Id.* The Order is a substantial change to—and expansion of—the principles the Court has previously laid out for deferral. Indeed, while the Court expressed concern in the Order that KRBA claimants would be treated differently than claimants in other adjudications if the Stipulation was adopted, it is in fact KRBA Claimants with their new right to defer who will be treated differently under the Order. Accordingly, the law has changed in a manner that fundamentally modifies the terms of the United States’ waiver of sovereign immunity.

**c. The Statutory Scheme Does Not Mandate or Create a Right to Deferral and Requires any Deferral to Comply With the McCarran Amendment.**

The Idaho Code neither establishes a right to deferral nor requires deferral at all. Instead, the legislature made any deferral conditional at the Court’s discretion and subject to the limitations of the McCarran Amendment. The Idaho Code discusses deferral in three key provisions, which respectively govern the State’s petition to commence an adjudication, the content of the Court’s commencement order, and the eventual decree.

*The Petition:* I.C. § 42-1406D(1) contains two relevant requirements. First, the petition for commencement must request “an adjudication within the terms of the McCarran amendment, 43 U.S.C. 666, of the water rights from surface water and ground water sources in the Kootenai River basin.” *Id.* Second, it must request “that a commencement order be issued only if the court determines it is possible to defer the adjudication of domestic and stock water rights as defined by section 42-1401A(4) and (11), Idaho Code, within the terms of the McCarran amendment.” *Id.*

*The Commencement Order:* I.C. § 42-1407 defines, *inter alia*, what must be included in an adjudication commencement order. It must include a provision requiring all claimants to file,

“except that the court may exclude those types of water rights designated in paragraph (a) of subsection (1) of section 42-1420, Idaho Code[.]” I.C. § 42-1407(4)(d).<sup>4</sup> The Court *may* exclude but is not required to do so.

*The Claims:* I.C. § 42-1420 describes the requirements for a final decree. In particular, it establishes that certain rights not included in the decree will not be lost by failure to file a claim, including “a water right for domestic or stock watering use, specifically excluded from the general adjudication by court order.” I.C. § 42-1420(1)(a). Again, the legislature contemplates that those rights could be lost for failure to file, but for the imposition of an optional order by the Court specifically excluding them.

Read together, certain requirements are clear. First, the State is only authorized to seek an adjudication and form of deferral which complies with the McCarran Amendment. I.C. § 42-1406D(1). Second, the Court *may* authorize the deferral of certain claims, I.C. § 42-1407(4)(d), but only by specific order, I.C. § 42-1420(1), and to do so, it must find that the deferral which is authorized complies with the McCarran Amendment, I.C. § 42-1406D(1). Third, if claims are deferred by order, they will not be lost for failure to file so long as an order specifically excluding them is in place. I.C. § 42-1420(1).

Because claims are only subject to deferral if the Court so orders, and because I.C. § 42-1420(1) contemplates that *de minimis* rights can be lost for failure to file absent an order specifically excluding them from the general adjudication, it follows that there is no statutory right to defer claims. The Court can lift such an order and render the claims subject to filing on an appropriate timeline at any time. And because the only substantive guideline that the

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<sup>4</sup> It is not clear on the face of the statute that the exclusion contemplated in I.C. § 42-1407 and § 42-1420 is the same as the deferral contemplated in I.C. § 42-1406D(1). However, it is well established that permanent exclusion of any class of claims would not meet the McCarran Amendment’s requirements. *See, e.g.,* Mem. Dec. on Pet. to Commence [CSRBA] at 21.

statute provides is the McCarran Amendment, the most the statutory scheme can be read to authorize is temporally limited deferral, rather than permanent deferral which functions to exclude a class of claims from the adjudication entirely. Nor could the Court's discretionary order excluding classes of claims temporarily create an indefinite right to exclusion that the Court cannot disturb.

**d. Deferring this Issue to the SRBA Would Not Provide a Complete Resolution.**

The Court noted in the Order that the United States has moved for an order requiring the adjudication of all de minimis claims in the SRBA, and that "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 SBRA." Order at 7. The Order notes that the KRBA Stipulation "raise[d] issues that overlap with those raised and pending unresolved 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." *Id.* While resolution of the United States' motion to adjudicate will provide important clarity to the SRBA parties, because sovereign immunity is a threshold issue, it cannot be deferred.

First, the KRBA and SRBA are in different procedural postures. In the SRBA, the United States and State entered, and the Court approved, a stipulation to defer claims specifically as a case management tool and the parties have litigated through a Final Unified Decree; no such stipulation was approved here and the adjudication has not even been commenced. Second, and more critically, it is not sufficient to defer the determination in the KRBA, because the scope of deferral is a threshold issue to the Court's jurisdiction over the United States for this proceeding. Sovereign immunity is, like subject matter jurisdiction, a threshold jurisdictional issue. *See Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1158 (9th Cir. 2021); *see also*

*Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1026 (9th Cir. 2010) (sovereign immunity goes to the court's subject matter jurisdiction).<sup>5</sup>

The Idaho Legislature has required the State's petition to request "an adjudication within the terms of the McCarran amendment." I.C. § 42-1406D. Accordingly, the Court must determine at the outset that it has jurisdiction over the United States, and to do so, it must determine whether deferral is a permanent right, or if all claims will be adjudicated, rather than just joined. If deferral is a permanent right, the KRBA could only proceed without the United States. *See, e.g., In re Snake River Basin Water Sys.*, 115 Idaho 1, 10 (1988) (Huntley, J., concurring) ("[I]f parties adjudicating a case in Idaho do not wish to make their action comprehensive, they are certainly free to litigate to their heart's content if they mind not that the extent of federal rights will not be adjudicated and the decree will be non-binding as to federal and Indian water rights."). To defer that jurisdictional decision to the SRBA—a different case—would be to require the United States to participate in a proceeding for which its sovereign immunity is not waived. But it is black-letter law that sovereign immunity is a threshold issue that must be construed narrowly and in favor of the sovereign. The Court should not assume jurisdiction and defer the issue to a different proceeding.<sup>6</sup>

### III. Conclusion

The United States opposes commencement of the KRBA as it is currently postured

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<sup>5</sup> As a practical matter, if the Court determined that permanent deferral applied in the SRBA, it would call the continued viability of the proceeding into doubt. *See, e.g., People of State of Cal. ex rel. California Dep't of Fish & Game v. Quechan Tribe of Indians*, 595 F.2d 1153, 1155 n.1 (9th Cir. 1979) ("sovereign immunity may be asserted at any stage of the proceedings"); *Hosp. Ass'n of New York State, Inc. v. Toia*, 577 F.2d 790, 795 (2d Cir. 1978) (finding that where waiver of sovereign immunity which allowed suit is withdrawn, it applies to pending actions in addition to future actions, and the action must be dismissed); *see also Iowa Tribe Of Kansas & Nebraska v. Salazar*, 607 F.3d 1225, 1236 (10th Cir. 2010) (sovereign immunity assessed on ongoing basis rather than just time of filing).

<sup>6</sup> To the extent the Court determines it must resolve the issue in the SRBA rather than in the KRBA, because of the jurisdictional implications, it should stay KRBA commencement pending resolution of the issue.

because its sovereign immunity is not waived for a proceeding with a right to defer claims permanently. However, the United States does not oppose commencement of the KRBA if the Court confirms that there will be an end to deferral of *de minimis* claims at some future date such that all claims to the use of water in the KRBA will be adjudicated.

Respectfully submitted this 12th day of February 2026.

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## **CERTIFICATE OF SERVICE**

I certify that on the 12<sup>th</sup> day of February 2026, I served true and correct copies of the foregoing BRIEF IN OPPOSITION TO PETITION FOR COMMENCEMENT as follows:

**Original via FedEx:**

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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\_\_\_\_\_  
Matthew Lamb



# EXHIBIT 1

DISTRICT COURT  
TWIN FALLS CO., IDAHO

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BY \_\_\_\_\_

B

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

Case No. 39576

STIPULATION FOR  
ESTABLISHMENT OF PROCEDURE  
FOR THE ADJUDICATION OF  
DOMESTIC AND STOCK WATER  
CLAIMS

**vs.**

## Respondents.

This document sets forth the agreement between the United States and the State of Idaho regarding the procedure for the

STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE  
ADJUDICATION OF DOMESTIC AND STOCK WATER CLAIMS - 1

adjudication of de minimus domestic and stock water claims in the Snake River Basin adjudication.

#### STIPULATION

The State of Idaho and its agencies and the Director of the Department of Water Resources, by and through their attorney, Clive J. Strong, and the United States, by and through its attorney, Peter C. Monson, stipulate that the following procedures for the adjudication of de minimus domestic and stock water claims as defined by Idaho Code § 42-1401A(5) and (12) shall be used in the above-entitled proceeding:

1. All claimants of de minimus domestic and stock water uses as defined in Idaho Code § 42-1401A(5) and (12) (Supp. 1988), (hereinafter referred to as "de minimus claimants") shall be joined as parties in this proceeding and will be bound by all decrees entered in this case, including the final decree. Any objections which a de minimus 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 (Supp. 1988) or be forever barred.

2. De minimus claimants may elect to have their claims fully adjudicated now or to postpone the adjudication of their claims by following the alternative procedure set forth in paragraph 3, infra. If a de minimus claimant elects to have his or her domestic or stock water claims (or both) fully adjudicated now, then the de minimus claimant must file a notice of claim as provided by Idaho Code § 42-1409 (Supp. 1988) and

pay any filing fees required by Idaho Code § 42-1414 (Supp. 1988).

3. De minimus 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(5) and (12) as enacted by the Act of April 3, 1986, ch. 234, 1986 Idaho Sess. Laws 645. Additionally, each de minimus claimant must agree to have any domestic or stock water 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; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of each right to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. 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 minimus claimant will not be required to file a notice of claim at this time or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

A. Election of this procedure will not result in a loss of such de minimus domestic or stock water claim nor will such

deferred de minimus claimant be precluded from establishing the requisite elements of his or her de minimus claim at a subsequent time using the summary procedure described herein.

B. The Director of the Idaho Department of Water Resources (hereinafter "Director") shall not be required to distribute de minimus domestic and stock water rights included in this proceeding within a water district as provided in Idaho Code § 42-607 unless all domestic and stock water claims in the water district have been decreed in this proceeding or the director determines that distribution is necessary. A claimant who has elected to defer adjudication of a de minimus domestic or stock water claim will be required to seek a final adjudication of the claim in order to have the right distributed.

C. In order to obtain an adjudicated water right, a claimant of a deferred de minimus domestic or stock water claim shall file a motion for determination of the claim with this court.

D. The following provisions are required to institute a determination of a deferred de minimus domestic or stock water claim.

1. The deferred de minimus claimant shall file with this district court a motion for determination of the domestic and stock water claim with an attached notice of claim on a form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons

against whom relief is sought. 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. Service upon the United States shall be accomplished by sending a copy of the motion and claim form by certified mail to the United States Attorney for the District of Idaho and United States Attorney General in Washington, D.C.

2. Any party who objects to the claim shall, within forty-five (45) days from the date of the first publication of the notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of an objection shall be served on the State of Idaho, the Director, the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.
3. The Director within thirty (30) days of the expiration of the time fixed to file an objection with the district court, shall file with the district court notification as to whether the Director will conduct an examination of the claim

and whether the Director will prepare for submittal to the district court a report on the claim. The Director may commence an examination of the water system in accordance with the provisions of Idaho Code § 42-1410 (Supp. 1988). Notification to the district court that a 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 minimus 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 district court, the deferred de minimus 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 minimus claimant shall contest the Director's costs, the district court shall then determine a reasonable cost to be paid by the deferred de minimus claimant.

4. The deferred de minimus claimants shall be required to pay the following additional costs and expenses of the proceeding: Any filing fees

of the claimant, and costs of publication. Pursuant to 43 U.S.C. § 666 no judgment for costs shall be assessed against the United States.

5. The Director shall file the report with the district court upon completion and shall send a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. Objections to the report of the Director, responses to the objections, and hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412.
6. For those cases in which the Director notifies the district court that the Director does not intend to prepare a report, the district court will proceed with a hearing, and any party having filed a timely objection with the district court may appear and challenge the claim. The district court may order the Director to prepare a report following a hearing on the deferred de minimus claimant's motion.
7. The district court clerk shall not accept for filing any motion 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.

8. The deferred de minimus claimant shall have the burdens of proof and of persuasion in establishing each and every element of his or her claim.

9. Venue for hearings on deferred domestic and stock water claims shall be in the county in which the point of diversion is located unless otherwise ordered by this district court.

E. 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 Snake River Basin general stream adjudication.

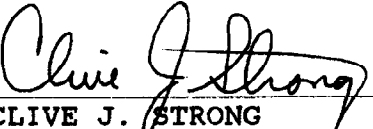
F. The district court retains continuing jurisdiction of the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred de minimus domestic or stock water claims. The district court on the motion of any party hereto, including a successor-in-interest, may adjudicate a deferred de minimus domestic or stock water claim under the alternative procedure set forth in this stipulation.

4. Counsel for the United States is entering into this stipulation in order to accommodate the State of Idaho's desire to streamline the instant phase of the adjudication. Counsel for the United States and the State of Idaho agree that the


proposed procedures meet the requirements of the McCarran Amendment, 43 U.S.C. 666, because all water users, including those claiming de minimus domestic and stock watering 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 procedures set forth in this stipulation. It should not be inferred, however, that by signing this stipulation, the United States recommends or otherwise encourages any water user to elect to defer the adjudication of his or her water rights.

DATED this 20<sup>th</sup> day of December, 1988.

STATE OF IDAHO

  
CLIVE J. STRONG  
Deputy Attorney General

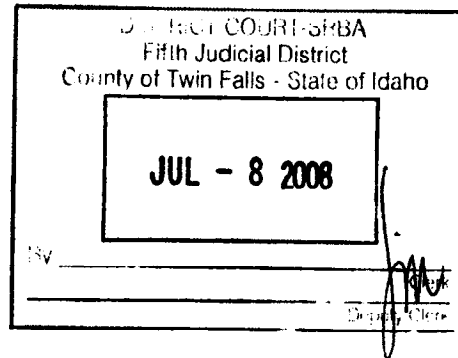
UNITED STATES

  
PETER C. MONSON  
Attorney  
Land and Natural Resources  
Division  
Indian Resources Section  
U.S. Department of Justice

## EXHIBIT 2

LAWRENCE G. WASDEN  
Attorney General

CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division  
P.O. Box 44449  
Boise, Idaho 83711-4449  
(208) 334-2400



Attorneys for State of Idaho

**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 the Use of Water from the Coeur d'Alene-Spokane River Basin Water System	) ) ) ) ) _____)	CASE NO. 49576  STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF DOMESTIC AND STOCK WATER CLAIMS
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**DESCRIPTIVE SUMMARY**

This document sets forth the agreement between the United States and the State of Idaho regarding the procedure for the adjudication of de minimus domestic and stock water claims in the Coeur d'Alene-Spokane River Basin Water System.

**STIPULATION**

The State of Idaho and its agencies and the Director of the Department of Water Resources, by and through their attorney, Clive J. Strong, and the United States, by and through its attorney, Vanessa Boyd Willard, stipulate that the following procedures for the adjudication of de minimus domestic and stock water claims as defined by Idaho Code § 42-1401A(4) and (11) shall be used in the above-entitled proceeding:

1. All claimants of de minimus domestic and stock water uses as defined in Idaho Code § 42-1401A(4) and (11), (hereinafter referred to as "de minimus claimants") shall be joined
- STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
DOMESTIC AND STOCK WATER CLAIMS - 1

as parties in this proceeding and will be bound by all decrees entered in this case, including the final decree. Any objections which a de minimus 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 minimus claimants may elect to have their claims fully adjudicated now or to postpone the adjudication of their claims by following the alternative procedure set forth in paragraph 3, infra. If a de minimus claimant elects to have his or her domestic or stock water claims (or both) fully adjudicated now, then the de minimus 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.

3. De minimus 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. Additionally, each de minimus claimant must agree to have any domestic or stock water 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; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of each right to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. 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 minimus claimant will not be required to file a notice of claim at this time or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

A. Election of this procedure will not result in a loss of such de minimus domestic or stock water claim nor will such deferred de minimus claimant be precluded from establishing the requisite elements of his or her de minimus claim at a subsequent time using the summary procedure described herein.

B. As provided by Idaho Code § 42-604, as rights in a basin are adjudicated, the Idaho Department of Water Resources 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 stock water claim will be required to seek a final adjudication of the claim prior to requesting distribution pursuant to Idaho Code § 42-607.

C. In order to obtain an adjudicated water right, a claimant of a deferred de minimus domestic or stock water claim shall file a motion for determination of the claim with this court.

D. The following provisions are required to institute a determination of a deferred de minimus domestic or stock water claim.

1. The deferred de minimus claimant shall file with this district court a motion for determination of the domestic and stock water claim with an attached notice of claim on a form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons against whom relief is sought. 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. Service upon the United States shall be accomplished by sending a copy of the motion and claim form by certified

mail to the United States Attorney for the District of Idaho and United States Attorney General in Washington, D.C.

2. Any party who objects to the claim shall, within forty-five (45) days from the date of the first publication of the notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of an objection shall be served on the State of Idaho, the Director, the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.
3. The Director within thirty (30) days of the expiration of the time fixed to file an objection with the district court, shall file with the district court notification as to whether the Director will conduct an examination of the claim and whether the Director will prepare for submittal to the district court a report on the claim. The Director may commence an examination of the water system in accordance with the provisions of Idaho Code § 42-1410. Notification to the district court that a 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 minimus 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 district court, the deferred de minimus 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 minimus claimant shall contest the Director's costs,

the district court shall then determine a reasonable cost to be paid by the deferred de minimus claimant.

4. The deferred de minimus claimants shall be required to pay the following additional costs and expenses of the proceeding: Any filing fees of the claimant, and costs of publication. Pursuant to 43 U.S.C. § 666 no judgment for costs shall be assessed against the United States.
5. The Director shall file the report with the district court upon completion and shall send a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. Objections to the report of the Director, responses to the objections, and hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412.
6. For those cases in which the Director notifies the district court that the Director does not intend to prepare a report, the district court will proceed with a hearing, and any party having filed a timely objection with the district court may appear and challenge the claim. The district court may order the Director to prepare a report following a hearing on the deferred de minimus claimant's motion.
7. The district court clerk shall not accept for filing any motion 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.
8. The deferred de minimus claimant shall have the burdens of proof and of persuasion in establishing each and every element of his or her claim.



9. Venue for hearings on deferred domestic and stock water claims shall be in the county in which the point of diversion is located unless otherwise ordered by this district court.

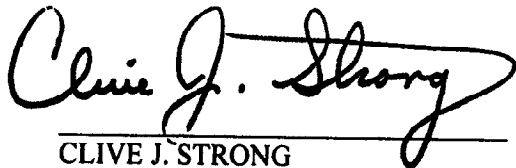
E. Appeals of any orders or decrees entered under this summary procedure shall be governed by the rules applicable to appeals of orders entered in the Coeur d'Alene-Spokane River Basin Water System.

F. The district court retains continuing jurisdiction of the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred de minimus domestic or stock water claims. The district court on the motion of any party hereto, including a successor-in-interest, may adjudicate a deferred de minimus domestic or stock water claim under the alternative procedure set forth in this stipulation.

4. Counsel for the United States is entering into this stipulation in order to accommodate the State of Idaho's desire to streamline the instant phase of the adjudication. Counsel for the United States and the State of Idaho agree that the proposed procedures meet the requirements of the McCarran Amendment, 43 U.S.C. 666, because all water users, including those claiming de minimus domestic and stock watering 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 procedures set forth in this stipulation. It should not be inferred, however, that by signing this stipulation, the United States recommends or otherwise encourages any water user to elect to defer the adjudication of his or her water rights.

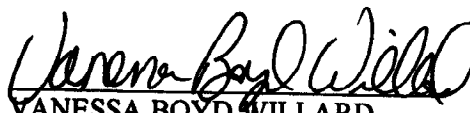
DATED this 3<sup>rd</sup> day of July, 2008.

STATE OF IDAHO



CLIVE J. STRONG  
Deputy Attorney General  
Idaho Attorney General's Office

UNITED STATES



VANESSA BOYD WILLARD  
Trial Attorney  
United States Department of Justice

## EXHIBIT 3

**Attorneys for State of Idaho**

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

**MAR - 1 2017**

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 the Use of Water from the  
 Palouse River Basin Water System

CASE NO. 00-59576  
 STIPULATION FOR ESTABLISHMENT OF  
 PROCEDURE FOR THE ADJUDICATION OF  
 DE MINIMIS DOMESTIC AND STOCK WATER  
 CLAIMS

This document sets forth the agreement between the United States and the State of Idaho regarding the procedure for the adjudication of *de minimis* domestic and stock water claims in the Palouse River Basin Water System.

The State of Idaho and its agencies and the Director of the Department of Water Resources, by and through their attorney, Clive J. Strong, and the United States, by and through its attorney, Vanessa Boyd Willard, stipulate that the following procedures for the adjudication of *de minimis* domestic and stock water claims as defined by Idaho Code § 42-1401A(4) and (11) shall be used in the above-entitled proceeding:

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 1**

1. All claimants of *de minimis* domestic and stock water 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 and will be bound by all decrees entered in this case, including the final decree. Any objections 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 the adjudication of their claims by following the alternative procedure set forth in paragraph 3, *infra*. If a *de minimis* claimant elects to have his or her domestic or stock water 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.

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.

Additionally, each *de minimis* claimant must agree to have any domestic or stock water 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; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of each right to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. 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*

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 2**

claimant will not be required to file a notice of claim at this time or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

A. Election of this procedure will not result in a loss of such *de minimis* domestic or stock water claim nor will such deferred *de minimis* claimant be precluded from establishing the requisite elements of his or her *de minimis* claim at a subsequent time using the summary procedure described herein.

B. As provided by Idaho Code § 42-604, as rights in a basin are adjudicated, the Idaho Department of Water Resources 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 stock water claim will be required to seek a final adjudication of the claim prior to requesting distribution pursuant to Idaho Code § 42-607.

C. In order to obtain an adjudicated water right, a claimant of a deferred *de minimis* domestic or stock water claim shall file a motion for determination of the claim with this court.

D. The following provisions are required to institute a determination of a deferred *de minimis* domestic or stock water claim.

1. The deferred *de minimis* claimant shall file with this district court a motion for determination of the domestic and stock water claim with an attached notice of claim on a form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons against whom relief is sought. 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

STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
*DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS - 3

court. Service upon the United States shall be accomplished by sending a copy of the motion and claim form by certified mail to the United States Attorney for the District of Idaho and United States Attorney General in Washington, D.C.

2. Any party who objects to the claim shall, within forty-five (45) days from the date of the first publication of the notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of an objection shall be served on the State of Idaho, the Director, the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.
3. The Director within thirty (30) days of the expiration of the time fixed to file an objection with the district court, shall file with the district court notification as to whether the Director will conduct an examination of the claim and whether the Director will prepare for submittal to the district court a report on the claim. The Director may commence an examination of the water system in accordance with the provisions of Idaho Code § 42-1410. Notification to the district court that a 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 district 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 district court shall then determine a reasonable cost to be paid by the deferred *de minimis* claimant.

4. The deferred *de minimis* claimants shall be required to pay the following additional costs and expenses of the proceeding: Any filing fees of the claimant, and costs of publication. Pursuant to 43 U.S.C. § 666 no judgment for costs shall be assessed against the United States.
5. The Director shall file the report with the district court upon completion and shall send a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. Objections to the report of the Director, responses to the objections, and hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412.
6. For those cases in which the Director notifies the district court that the Director does not intend to prepare a report, the district court will proceed with a hearing, and any party having filed a timely objection with the district court may appear and challenge the claim. The district court may order the Director to prepare a report following a hearing on the deferred *de minimis* claimant's motion.
7. The district court clerk shall not accept for filing any motion 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.

STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
*DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS - 5



8. The deferred *de minimis* claimant shall have the burdens of proof and of persuasion in establishing each and every element of his or her claim.

9. Venue for hearings on deferred domestic and stock water claims shall be in the county in which the point of diversion is located unless otherwise ordered by this district court.

E. 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 Palouse River Basin Water System.

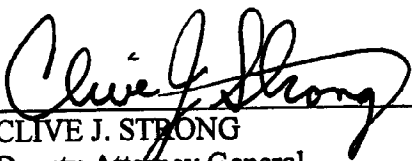
F. The district court retains continuing jurisdiction of the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred *de minimis* domestic or stock water claims. The district court on the motion of any party hereto, including a successor-in-interest,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

4. Counsel for the United States is entering into this stipulation in order to accommodate the State of Idaho's desire to streamline the instant phase of the adjudication. Counsel for the United States and the State of Idaho agree that the proposed procedures meet the requirements of the McCarran Amendment, 43 U.S.C. 666, because all water users, including those claiming *de minimis* domestic and stock watering 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 procedures set forth in this stipulation. It should not be inferred, however, that by signing this stipulation, the United States recommends or otherwise encourages any water user to elect to defer the adjudication of his or her water rights.

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 6**

DATED this 17<sup>th</sup> day of January, 2017.

STATE OF IDAHO

  
CLIVE J. STRONG  
Deputy Attorney General  
Idaho Attorney General's Office

DATED this 21<sup>st</sup> day of February, 2017.

UNITED STATES



VANESSA BOYD WILLARD  
Trial Attorney  
United States Department of Justice

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF  
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 8**

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the STIPULATION FOR ESTABLISHMENT OF PROCEDURES FOR THE ADJUDICATION OF DE MINIMIS DOMESTIC & STOCK WATER CLAIMS was mailed on March 01, 2017, with sufficient first-class postage to the following:

RUDLEY, BRADLEY J  
DEPUTY PROSECUTING ATTORNEY  
LATAH COUNTY COURTHOUSE  
PO BOX 8068  
MOSCOW, ID 83843

DIRECTOR OF IDWR  
DOCUMENT DEPOSITORY  
PO BOX 83720  
BOISE, ID 83720-0098

STEVEN C MOORE  
NATIVE AMERICAN RIGHTS FUND  
1506 BROADWAY  
BOULDER, CO 80302-6217

LOPEZ, MICHAEL A  
NEZ PER TRIBE LEGAL COUNSEL  
100 AGENCY RD  
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LAPWAI, ID 83540

CHIEF NATURAL RESOURCES DIV  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF IDAHO  
PO BOX 83720  
BOISE, ID 83720-0010

DAVID L NEGRI  
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ENVIRONMENT & NATURAL RESOURCE  
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BOISE, ID 83724

VANESSA BOYD WILLARD  
US DEPARTMENT OF JUSTICE  
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DENVER, CO 80202