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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 THE
KOOTENAI RIVER BASIN WATER
SYSTEM**

Case No. 89576

**STATE OF IDAHO'S REPLY IN
SUPPORT OF THE PETITION FOR
COMMENCEMENT**

The Kootenai River Basin Adjudication (“KRBA”) should be commenced because it is a general adjudication for all water rights in the Kootenai River basin. Although the United States raises concern regarding the proposed deferral procedures for *de minimis* domestic and stockwater rights (“*de minimis* procedures”), those concerns do not withstand scrutiny. The *de minimis* procedures comply with the McCarran Amendment, effectively waiving the United States’ sovereign immunity and allowing it to be joined as a party to the KRBA. Accordingly, the State of Idaho (“State”) respectfully requests that this Court conclude that the State’s proposed *de minimis* procedures comply with the McCarran Amendment and issue an Order commencing the KRBA as authorized by Idaho Code § 42-1406D and requested by the State’s Petition to Commence Kootenai River Basin Adjudication (“Petition”).

BACKGROUND

The Kootenai River basin is the last river basin in Idaho to be adjudicated. On July 1, 2024, the Idaho Legislature enacted Idaho Code § 42-1406D for the Commencement of the KRBA. The statute authorizes the director of the Idaho Department of Water Resources to

petition the district court 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. . . and contain a 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.

Idaho Code § 42-1406D (1).

On January 3, 2025, the State filed its Petition with the Court for all “surface and ground water of the Kootenai River basin water system.” Petition at ¶ 10. The State petitioned that all classes of uses be included and requested that the commencement of the KRBA be issued only if the Court finds that deferring the *de minimis* rights complies with the McCarran Amendment. Petition at ¶ 13, 16.

After the Petition was filed, the Court set a Commencement hearing for the KRBA. Subsequently, the United States and the State jointly moved for an extension of time to file pre-hearing briefs and to reschedule the Commencement hearing. The Court reset the Commencement hearing for July 15, 2025.

The State filed its pre-hearing brief on June 26, 2025. First, the State argued that the proposed boundaries, as set forth in the Petition, comply with the McCarran Amendment. Second, the State argued that the proposed *de minimis* procedures set forth in the Notice of Filing Petition (“Notice”) comply with the McCarran Amendment. The State also informed the Court that the State and the United States were working on alternative proposed *de minimis* procedures. The Court continued the Commencement hearing to allow the State and the United States time to reach an agreement on an alternative procedure process.

On August 18, 2025, the State and the United States filed a Joint Motion to Adopt Proposed De Minimis Procedures. The Court denied the motion and set a new briefing schedule for the Commencement hearing.

On December 30, 2025, the State filed a Status Update to inform the Court that the State intended to support the *de minimis* procedures at the Commencement

hearing as set forth in the Notice, attached as Exhibit 1 to the State's Notice of Appearance, Prehearing Statement, and Memorandum of Law.

The United States filed its Response in Opposition to the State's Petition on February 13, 2026. It argues that the Court's Order Denying Joint Motion to Adopt Proposed De Minimis Procedures describes "deferral as a 'right' held by a claimant, rather than a case management tool controlled by the Court." United States' Response Brief in Opposition at 7. This claim is without merit.

ARGUMENT

In all five of the prior adjudications, the Court found that the *de minimis* procedures comply with the McCarran Amendment.¹ However, the Court declined to accept the stipulated proposed *de minimis* procedures by the State and the United States in this matter. Relevant here, the Court declined to adopt the proposed *de minimis* procedures because claimants in the KRBA would be treated differently from other adjudications. Amended Order Denying Joint Motion to Adopt Proposed De Minimis Procedures at 5.

Despite the United States' concerns with the Court's Order, the proposed *de minimis* procedures in the Notice in this matter should be found to comply with the McCarran Amendment. The proposed procedures require that all claimants of *de minimis* rights be joined to the adjudication, and that the *de minimis* rights will eventually be adjudicated. While the *de minimis* procedures do not provide a definite

¹ In the SRBA, the CSRBA, and the PRBA, the United States and the State stipulated to proposed *de minimis* procedure. In the CFPRBA and the BRBA, the United States contested the proposed *de minimis* procedures, but the Court found that the procedures complied with the McCarran Amendment.

end for adjudicating *de minimis* claims, it remains within the scope of the McCarran Amendment by aiding in the adjudication for all claims in the Kootenai River basin.

1. The Proposed Procedures for *De Minimis* Domestic and Stockwater Claims Does Not Remove the KRBA From the Scope of the United States' Waiver of Sovereign Immunity Under the McCarran Amendment.

Congress intended the McCarran Amendment to waive the United States' sovereign immunity for a "general adjudication of 'all of the rights of various owners on a given stream.'" *Dugan v. Rank*, 372 U.S. 609, 618 (1963) (quoting S. Rep. No. 755, 82d Cong., 1st Sess. 9 (1951)). "The clear federal policy evinced by [the McCarran Amendment] is the avoidance of piecemeal adjudication of water rights in river system." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976).

The U.S. Supreme Court established two standards for water adjudications to meet the comprehensive requirement of the McCarran Amendment. First, all claimants within the water system must be joined. *Dugan*, 372 U.S. at 619. The Idaho Supreme Court recognized that to comply with the McCarran Amendment, "all rights of all claimants... within the state of Idaho must be included in the adjudication." *In re Snake River Basin Water Sys.*, 115 Idaho 1, 8, 764 P.2d 78, 85 (1988). Second, the adjudication must include all categories of water right claims with priority between the claims. *United States v. Dist. Ct. in and for Eagle Cnty. Colo.*, 401 U.S. 520, 524 (1971).

Idaho Code § 42-1406D states that the "[e]ffective management of the waters of the Kootenai River basin requires that a comprehensive determination of the

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nature, extent, and priority of the rights of **all users** of surface and ground water be determined.” Idaho Code § 42-1406D (1) (emphasis added). It also requires 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 Notice in this matter sets forth the proposed procedures for deferred *de minimis* claims to aid in the efficient adjudication of the claims. The *de minimis* procedures provide a process to adjudicate the *de minimis* claims that allow the Court to efficiently adjudicate all claims in the KRBA. The United States’ request for a definite closure for filing *de minimis* claims is the type of procedural technicality traditionally left to the state’s discretion. *See United States v. Dist. Ct. in and for Eagle Cnty. Colo.*, 401 U.S. 520, 525 (1971) (rejecting the argument that a supplemental adjudication cannot be considered a general adjudication and outside the scope of the McCarran Amendment).

The United States asserts that the “permanent right to defer *de minimis* claims” allows claimants to avoid adjudication of their rights indefinitely—effectively excluding a class of water rights. *See generally* United States’ Brief in Opposition to Petition for Commencement. However, until claimants adjudicate their claims, they cannot assert priority over other adjudicated rights, even when they hold senior priority. The fact that the procedures plausibly allow for a claimant to indefinitely defer their claims does not remove the KRBA from the scope of the McCarran

Amendment. Despite the uncertainty about when the *de minimis* claims will end, in totality, all claims in the KRBA will eventually be adjudicated.

Further, this Court rejected a similar challenge to the *de minimis* procedures by the United States in the CFRBA and adopted that analysis in the BRBA. Memorandum Decision on Optional Deferral Process, Case No. 69576 (“CFRBA Decision”) at 10; Memorandum Decision on Optional Deferral Process, Case No. 79576 (“BRBA Decision”) at 3. This Court found that the “the optional deferral process satisfies the requirements of the McCarran Amendment.” CFRBA Decision at 10. Specifically, it found that the deferred process does not exclude any class of water rights.

Claimants of *de minimis* water rights within the adjudicated water system will be served and joined as parties to the adjudication and will be bound by any orders or decrees entered in the adjudication. The 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). Like the findings in the CFRBA and BRBA, all water rights in the KRBA will be adjudicated either through the standard process or the deferred process in compliance with the McCarran Amendment.

2. The United States is Barred from Relitigating the Issue of Whether the Proposed Procedures Satisfy the Requirements of the McCarran Amendment.

The United States is barred by issue preclusion from asserting that the *de minimis* procedures in the KRBA do not comply with the McCarran Amendment. Whether “issue preclusion bars relitigation between the same parties of a prior litigation is a question of law.” *Ticor Title Co. v. Stanion*, 144 Idaho 119, 122, 157

P.3d 613, 616 (2007). The Idaho Supreme Court set forth a five-element test for issue preclusion:

(1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.

Id. at 124, 157 P.3d at 618. All five elements are present here.

The United States is a party to the CFPRBA and BRBA and participated in the commencement hearings for both adjudications. *See* United States' Special Appearance and Opposition to State of Idaho's Proposal to Defer Adjudication of Certain Water Right Claims, Case Nos. 69576 and 79576 (April 30, 2021) ("United States' Opposition").

The dispositive issue of whether the procedures used in commencing the CFPRBA and BRBA comply with the McCarran Amendment has already been resolved by the Court in those cases. *See* CFPRBA Decision; *see also* BRBA Decision. In the both the CFPRBA and the BRBA, the United States challenged identical procedures. In fact, the only difference between the procedures in the CFPRBA, BRBA and KRBA is the name change to reflect the different adjudication. In both the CFPRBA and the BRBA, the United States asserted that the procedures do not comply with the McCarran Amendment based, in part, on an indefinite timeframe for completing the adjudication. All the elements necessary for issue preclusion apply in this case. It is the same issue between the same parties and the final judgment in the prior cases should be the same in this case.

The United States fails to present any argument that distinguishes their challenge to the KRBA procedures from the CFPRBA and the BRBA. Their brief makes clear that they are not attempting to distinguish these procedures from those accepted by the Court in the CFPRBA and BRBA. Rather, the United States asks the Court to clarify that there will be an end to the deferral of claims. This is precisely the kind of relitigation that issue preclusion is intended to prevent. *Rodriguez v. Dep't of Correction*, 136 Idaho 90, 92, 29 P.3d 401, 403 (2001). Therefore, the United States should be estopped from asserting an identical issue that the Court already decided in both the CFPRBA and the BRBA.

CONCLUSION

The *de minimis* procedures in this matter comply with the McCarran Amendment because they include all claimants, with the eventual adjudication of all water rights within the basin. Accordingly, the United States can be joined to the adjudication pursuant to State law and the McCarran Amendment. Therefore, the State requests that the Court issue an Order commencing the KRBA, including that the *de minimis* procedures comply with the McCarran Amendment.

Respectfully submitted this 19th day of February 2026.



ROWDY J. KELLER
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February 2026, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

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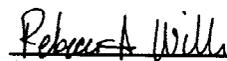
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