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

MAR 6 2026

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 KOOTENAI RIVER BASIN WATER SYSTEM	)	**Case No: 89576** **MEMORANDUM DECISION ON OPTIONAL DEFERRAL PROCESS**

I
BACKGROUND

In 2024, the Idaho Legislature determined that "[e]ffective management of the waters of the Kootenai River basin requires that a comprehensive determination of the nature, extent, and priority of the rights of all users of surface and ground water be determined." I.C. § 42-1406D(1). It therefore enacted Idaho Code § 42-1406D. That statute authorizes the filing of a petition to commence an adjudication of the water rights from surface water and ground water sources in the Kootenai River basin.

On January 3, 2025, the State filed a *Petition* to commence 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 Court will refer to the proposed adjudication as the Kootenai River Basin Adjudication ("KRBA"). The *Petition* recognizes "[t]here are no classes of uses proposed to be excluded from the adjudication." *Petition*, p.5. However, it proposes a process for the optional deferral of the adjudication of domestic and stock water rights as defined

by subsections (4)[1] and (11)[2] of Idaho Code § 42-1401A. The Court will collectively refer to these domestic and stock water rights as "*de minimis* rights." The *Petition* requests the Court issue a commencement order only if it determines it is possible to defer the adjudication of *de minimis* rights within the terms of the McCarran Amendment. The State supports its *Petition* with a *Prehearing Statement and Memorandum of Law*.

The Court subsequently entered an *Order* requiring the State to take certain actions on its *Petition*. It required the State to prepare a *Notice of Filing Petition* containing the information and enclosures required under Idaho Code § 42-1407(3). The State was required to publish that *Notice* for three consecutive weeks in a newspaper of general circulation in each county in which any part of the water system proposed to be adjudicated is located. It was further required to serve the *Notice* on the United States, the Director of the Idaho Department of Water Resources, and on any Indian tribe residing in the proposed adjudication boundaries or having interests in any portion of the water system. On April 14, 2025, the State filed an *Affidavit of Service* asserting that the *Notice* was published and served in compliance with the requirements of the Court's *Order*. In its *Notice*, the State proposes a process through which the holder of a *de minimis* right may elect to defer the adjudication of that right to a later date in the KRBA. The proposed process is set forth in its entirety below and will be referred to herein as "the optional deferral process."

The Court set a commencement hearing on the *Petition* for February 24, 2026. The United States filed a *Notice of Appearance* on March 26, 2025. The Kootenai Tribe of Idaho filed a *Notice of Appearance* on April 4, 2025. 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 that differed from the optional deferral process set forth in the State's *Notice*. On September 19, 2025, the Court entered an *Amended Order Denying Joint Motion to*

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[1] Idaho Code § 42-1401A(4) defines "Domestic use" as "(1) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (½) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day; or (2) The use of water for any other purpose, if the total use does not exceed a diversion volume of two and eight-tenths (2.8) acre feet per year." I.C. § 42-111(a)(i).

[2] Idaho Code § 42-1401A(11) defines "Stock watering use" as "the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day."

Adopt Proposed De Minimis Procedures. In that *Order*, the Court denied the *Joint Motion* because, among other reasons, the alternate deferral process set forth therein treated *de minimis* water right holders in the Kootenai River basin differently than *de minimis* water right holders in the rest of the State. The analysis set forth in the Court's *Order Denying Joint Motion to Adopt Proposed De Minimis Procedures* is incorporated herein by reference.

On December 30, 2025, the State of Idaho filed a *Status Update*. In the *Status Update*, the State reasserted its support of the *Petition* and the optional deferral process set forth in its *Notice*. On February 13, 2026, the United States filed a *Brief in Opposition to Petition for Commencement*. The United States opposes the *Petition* on the limited basis that the optional deferral process does not comply with the requirements of the McCarran Amendment. On February 20, 2026, the State of Idaho filed a reply in support of the *Petition*. A hearing on the *Petition* was held before the Court on February 24, 2026. At the hearing, counsel for the Kootenai Tribe of Idaho joined in the United States' opposition to the *Petition*. Aside from the United States and the Kootenai Tribe of Idaho, no other water users oppose the *Petition*.

II.
ANALYSIS

The issue before the Court is whether the optional deferral process removes the KRBA from the purview of the McCarran Amendment. Resolution of this issue is significant for two reasons. First, Idaho Code § 42-1406D(1) directs that a commencement order for KRBA be issued "only if the court determines it is possible to defer the adjudication of [*de minimis* rights] within the terms of the McCarran amendment." Second, resolution of this issue affects whether the United States has waived its sovereign immunity for purposes of this proceeding.

A. The McCarran Amendment.

The United States enjoys sovereign immunity, which protects it from being sued without its consent. However, it may voluntarily waive sovereign immunity with respect to specific classes of cases. In 1952, Congress chose to waive the United States' sovereign immunity with respect to comprehensive general stream adjudications via its passage of the McCarran Amendment:

> Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided,* That no judgment for costs shall be entered against the United States in any such suit.

43 U.S.C. § 666. The McCarran Amendment permits the United States to be joined as a party to a comprehensive general stream adjudication, even if commenced by a state court. It also authorizes the United States' water rights to be determined before a state court within such a proceeding.

For an adjudication to fall within the scope of 43 U.S.C. § 666, the McCarran Amendment "requires the adjudication of the rights of all those who use the water of a river system within a state, including those who use the water of tributaries." *In re Snake River Basin Water System*, 115 Idaho 1, 9, 764 P.2d 78, 86 (1988). This includes the adjudication of all categories of water right claims on the system. *Id*; *See e.g.*, *United States v. Dist. Ct. in and for Eagle Cnty., Colo.* 401 U.S. 520, 524 (1971) (the McCarran Amendment "is an all-inclusive statute concerning 'the adjudication of rights to the use of water of a river system' which in [§] 666(a)(1) has no exceptions and which, as we read it, includes appropriate rights, riparian rights, and reserved rights'"). Whether the United States has waived sovereign immunity under the McCarran Amendment is an issue of law. *See e.g.*, *Memorandum Decision on Petition to Commence*, Twin Falls County Case No. 49576 (Nov. 12, 2008) ("the Court views the issue of whether or not the deferral procedure satisfies McCarran Amendment requirements as an issue of law").

B. The optional deferral process does not remove the KRBA from the purview of the McCarran Amendment.

The United States asserts its waiver of sovereign immunity does not apply here because the optional deferral process removes the KRBA from the purview of the McCarran Amendment.

As a result, it is the United States' position that the adjudication cannot be properly commenced under Idaho Code § 42-1406D(1) and that it is not subject to the jurisdiction of this Court. The Court disagrees.

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 Snake River Basin Adjudication ("SRBA"), Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA"), Palouse River Basin Adjudication ("PRBA"), Clark Fork-Pend Oreille River Basins Adjudication ("CFPRBA"), and Bear River Basin Adjudication ("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.

The optional deferral process proposed in the KRBA is substantially the same as that adopted by the Court in the preceding five adjudications. In each preceding adjudication, the Court has adopted the optional deferral process to govern the deferral of *de minimis* rights. As a result, *de minimis* water right holders in the rest of the state have been treated uniformly in each preceding adjudication. Under the optional deferral 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 at this time. And, the election to defer does not result in the loss of a *de minimis* right.

The United States is a party to the SRBA, CSRBA, and PRBA. It has previously agreed via stipulation that the optional deferral processes in those three adjudications meet the requirements of the McCarran Amendment. The United States is also a party to the CFPRBA and the BRBA. In both of those adjudications, the United States opposed the State's commencement petitions on the basis the proposed optional deferral process removed those adjudications from the purview of the McCarran Amendment. In addressing substantially the same optional deferral process in the CRPRBA and BRBA, the Court found the optional deferral process satisfies the requirements of the McCarran Amendment. *Memorandum Decision on Optional Deferral Process*, Twin Falls Case No. 69576, p.10 (June 15, 2021); *Memorandum Decision on Optional Deferral Process*, Twin Falls Case No. 79576, p.10 (June 15, 2021). The Court does not repeat the analysis set forth in those *Memorandum Decisions*, but rather incorporates them herein by reference. Neither the McCarran Amendment, this State's

adjudication statutes, nor any other law applicable to the United States' waiver of sovereign immunity has changed in any appreciable way since the Court entered those *Memorandum Decisions*. Therefore, for the reasons set forth herein, the Court declines to stray from its prior rulings on this issue.

In considering whether the KRBA falls within the scope of the McCarran Amendment, the Court turns to the *Petition*. The plain language of the *Petition* requests "an action for the general adjudication *inter se* of all rights arising under state or federal law to the use of surface and ground waters from the Kootenai River Basin water system." *Petition*, ¶1 (underline added). Thus, the Court finds the *Petition* seeks a comprehensive adjudication of all water rights in the system. Indeed, the stated scope of the KRBA provides that "[t]here are no classes of uses proposed to be excluded from the adjudication." *Id.* at ¶13. As the *Petition* seeks the adjudication of all rights, and no classes of uses are to be excluded, the Court finds the KRBA is the type of comprehensive general adjudicated contemplated by the McCarran Amendment.

That the *Petition* also proposes the optional deferral process does not alter the comprehensive nature of the KRBA. For ease of reference, the Court will include the proposed optional deferral process in its entirety here:

> 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.
>
> Users of D&S water 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 pursuant to Idaho Code § 42-1409 and pay any fees as per 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 pursuant to Idaho Code§ 42-607 and/or before an application for change of the water right may be filed with IDWR (Idaho Code§ 42-222).
>
> D&S water right holders who choose to delay filing on their D&S water rights and who wish to obtain an adjudicated water right will be required to file a Motion for Determination of the Use ("Motion"), with an attached Notice of Claim. 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, the claimant must serve the Motion and Notice of 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 may object to a D&S 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 of Claim. 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 district court stating whether the Director will examine the 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, to be paid by the claimant, for examination of the claim and preparation of the report. The notice will also include the Director's approximation of time for filing the report. Before the Director files the report, the D&S claimant shall pay the balance ofthe Director's costs or be refunded by the Director for any unused 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 pursuant to 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. A 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.

Appeal of any order or decree 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.

Notice of Filing Commencement Petition, pp. 4-5.[3]

A review of the optional deferral process establishes that it does not exclude the holders of *de minimis* rights from the KRBA. Holders of *de minimis* rights will be joined as parties to the adjudication and will be bound by any orders or decrees entered in the adjudication. Further, they will be required to claim and have their rights adjudicated prior to seeking any priority administration of such rights and/or before an application for change of the water right may be filed with IDWR.

In addressing substantially the same optional deferral process in the CSRBA, this Court summed up these points as follows:

> This Court agrees with the reasoning of both the United States and the State of Idaho.[[4]] The deferral procedure does not exclude *de minimis* domestic and stockwater rights from the adjudication. All water users on the Coeur d'Alene-Spokane Basin River system in the State of Idaho, including *de minimis* water users, will be served and joined as parties to the adjudication. All parties, including *de minimis* water users, will be bound by any orders or decrees entered in the adjudication. As such, any party electing to defer a claim will be estopped from collaterally attacking any such orders or decrees. Parties who timely file non-deferrable claims or elect not to defer their claim will not be prejudiced by the procedure as a *de minimis* water user will not be able to object to the claim of another or otherwise appear in any proceedings without first filing their claim. A *de minimis* water user also will not be able to have their "water right" administered as against decreed rights until such time as their claim has been adjudicated. Once a deferred claim is filed and ultimately decreed, the partial decree issued for the claim will be incorporated into and subject to any final unified decree issued for the entire adjudication. The Court will retain jurisdiction over any final unified decree entered in the adjudication for this purpose. Therefore, 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.

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[3] A copy of the *Notice of Filing Commencement Petition* is attached as Exhibit 1 to the *Affidavit of Service* filed by the State on April 14, 2025.

[4] The United States did not oppose the optional deferral process in the CSRBA, but rather supported it by way of stipulation and argument.

Memorandum Decision on Petition to Commence, Twin Falls Case No. 49576, p.23 (Nov. 12, 2008). The same rationale and reasoning set forth in the Court's 2008 decision applies here.

The Court finds the McCarran Amendment does not require the Court to set specific timelines for the adjudication of claims at the outset of an adjudication. *See e.g., U.S. v. District Court in and For Water District No. 5, Colo.*, 401 U.S. 527, 529 (1971) (providing that an adjudication may be structured to adjudicate claims in phases and still comply with the McCarran Amendment so long as it is comprehensive "in the totality"). Setting specific timelines in such a manner is simply impractical given the scope of a general stream adjudication and the large number and diversity of claims involved. Additionally, the Court is in the process of working through the other general adjudications which are at various stages. And, the Court finds the setting of timelines to be an issue of case management, not jurisdiction.

Therefore, the Court finds the KRBA (1) complies with the terms of the McCarran Amendment, (2) is authorized to be commenced under the plain language of Idaho Code § 42-1406D, and (3) is a comprehensive general stream adjudication proceeding through which this Court may exercise jurisdiction over the United States.

C. The United States misreads the Court's *Amended Order Denying Joint Motion to Adopt Proposed De Minimis Procedures.*

The United States argues the Court's *Amended Order Denying Joint Motion to Adopt Proposed De Minimis Procedures* constitutes a recent material change in the law that changes the foregoing analysis. The United States misreads the Court's *Amended Order*.

In the *Amended Order*, the Court addressed an alternate deferral process proposed by the United States and the State in this proceeding. The alternate deferral process expressly contemplated a two-phase adjudication consisting of a "non-deferred phase" and a "deferred phase." Under that process, the holder of a de minimis right could elect to defer the adjudication of that right during the "non-deferred phase," but could not elect to defer during the "deferred phase." In this regard, the alternate deferral process expressly contemplated what the Court characterized as "an end to the right to defer." *Amended Order Denying Joint Motion to Adopt Proposed De Minimis Procedures*, p.2.

In rejecting this alternate deferral process, the Court noted that de minimis water right holders in the rest of the state, aside from the Kootenai River basin, have been treated uniformly

in each preceding adjudication. 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 Court noted that at this time, "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." *Id.* at 4.

By contrast, the Court went on to provide that the same cannot be said of the proposed alternate deferral process:

> 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.

Id.

The United States latches on to the Court's characterization of the "deferred phase" of the proposed alternate deferral process as "an end to the right to defer." It argues the Court's use of this vernacular in its characterization creates a legal right in *de minimis* water right holders in the Kootenai River that does not exist with respect to *de minimis* water right holders in the rest of the State. The Court disagrees. The Court's use of the term "an end to the right to defer" was used by the Court to characterize and describe that portion of the alternate deferral process that expressly contemplated a "deferred phase," wherein *a de minimis* water user would lose the ability to elect to defer the adjudication of his water right. The United States' reading of anything more into the term is unfounded. The Court clarifies that its characterization of the "deferred phase" as describing "an end to the right to defer" is simply that, a characterization. The Court further clarifies that by adopting the optional deferral process as set forth herein, *de minimis* water right holders in the Kootenai River basin will be treated the same as de minimis water right holders in the rest of the State.

III.

CONCLUSION

Based on the foregoing, the Court concludes it is possible to defer the adjudication of *de minimis* rights in the KRBA within the terms of the McCarran Amendment through the optional deferral process proposed by the State. The Court concludes the KRBA complies with the terms of the McCarran Amendment. The Court concludes the KRBA is authorized to be commenced under the plain language of Idaho Code § Idaho Code § 42-1406D(1). The Court concludes the KRBA is a comprehensive general stream adjudication proceeding through which this Court may exercise jurisdiction over the United States under the McCarran Amendment.

DATED: March 6, 2026.

ERIC J. WILDMAN
Presiding Judge
Kootenai River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED: March 6, 2026.

ERIC J. WILDMAN
Presiding Judge
Kootenai River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the MEMORANDUM DECISION ON OPTIONAL DEFERRAL PROCESS were mailed on March 6, 2026, by first-class mail to the following:

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