

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

JUN 15 2021

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)	Case No.: 79576
ADJUDICATION OF RIGHTS)	
TO THE USE OF WATER)	ORDER ESTABLISHING PROCEDURES
FROM THE BEAR RIVER)	FOR THE ADJUDICATION OF <i>DE</i>
BASIN WATER SYSTEM)	<i>MINIMIS</i> DOMESTIC AND
)	STOCKWATER CLAIMS
)	
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_____)	

Pursuant to the *Memorandum Decision on Petition to Commence Bear River Basin Adjudication*, the *Memorandum Decision on Optional Deferral Process* and the *Commencement Order for the Bear River Basin Adjudication* entered in the above-captioned matter; the following procedures are ordered for Case No. 69576, *In Re: The General Adjudication of the Rights to the use of Water from the Bear River Basin Water System*:

DEFERRAL PROCEDURE FOR *DE MINIMIS* DOMESTIC AND STOCKWATER CLAIMS

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

Water users of D&S rights may elect to file a Notice of Claim at the time of commencement of the Bear River Basin Adjudication or defer (postpone) the

filing. If a D&S claimant elects to have the claim adjudicated now, then the D&S claimant must file a notice of claim (Idaho Code § 42-1409) and pay any fees (Idaho Code § 42-1414). Election to defer 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 elects to defer the filing of a Notice of Claim will be required to have the water right adjudicated prior to the water right being distributed by a watermaster (Idaho Code § 42-607) and/or before an application for change of the water right may be filed with IDWR (Idaho Code § 42-222).

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

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

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

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

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

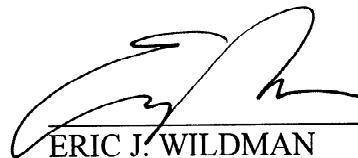
Appeals of any orders or decrees entered under the deferred procedure are governed by the rules applicable to appeals of orders in the Bear River Basin Adjudication.

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.

IT IS SO ORDERED

DATED: June 14, 2021



ERIC J. WILDMAN

Presiding Judge

Bear 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: June 14, 2021



ERIC J. WILDMAN
Presiding Judge
Bear River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF DE MINIMIS DOMESTIC AND STOCKWATER CLAIMS was mailed on June 15, 2021, with sufficient first-class postage to the following:

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