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DEPARTMENT OF  
WATER RESOURCES

MAR 6 2026

By \_\_\_\_\_  
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 ) Case No.: 89576  
THE USE OF WATER FROM THE )  
KOOTENAI RIVER BASIN ) MEMORANDUM DECISION ON  
WATER SYSTEM ) PETITION TO COMMENCE  
 ) KOOTENAI RIVER BASIN  
 ) ADJUDICATION

I.

BACKGROUND

On January 3, 2025, the State of Idaho filed a *Petition* seeking commencement of a 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 and for the administration of such rights. The *Petition* is filed pursuant to Idaho Code § 42-1406D, which authorizes the filing of the *Petition* before the Snake River Basin Adjudication District Court of the fifth judicial district of the state of Idaho, in and for the county of Twin Falls. The *Petition* seeks an order from the Court which does the following:

- a. Commences a 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 within the state of Idaho;
- b. Describes the boundaries of the water system . . . .;
- c. Lists the counties partially located within the boundaries of the water system;
- d. Determines that it is possible to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A within the terms of the McCarran Amendment;
- e. Establishes a process to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code;

SCANNED  
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f. Directs all claimants of rights to the use of surface and ground waters from the water system, including holders of permits for which proof of beneficial use was filed on or prior to the date of entry of the commencement order, to file a notice of claim with the Director as provided in Idaho Code § 42-1409, unless claimants elect to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A;

g. Approves the method of ascertaining and serving claimants not disclosed following the completion of the service required by subsections (2) and (3) of Idaho Code § 42-1408 . . . ; and

h. Confirms the Director's statutory authority to investigate all uses of water from the system in accordance with Idaho Code § 42-1410 and file a report in accordance with Idaho Code § 42-1411.

*Petition*, pp.7-8.

The *Petition* seeks a determination by this Court of all rights to use of the water system including those of the United States as well as all determinations necessary for the proper administration of the water rights determined in the adjudication. The *Petition* also provides that an order commencing the adjudication be issued only if the Court determines that it is possible to defer the adjudication of *de minimis* domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A within the terms of the McCarran Amendment.

On November 13, 2024, the Idaho Supreme Court issued an *Order Re: Appointment of District Judge, Confirmation of Special Jurisdiction and Determination of Venue for the General Adjudication of the Kootenai River Basin* designating the Snake River Basin Adjudication District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, as the county and court of venue for this general adjudication proceeding.

On January 9, 2025, this Court entered an *Order Setting Commencement Hearing and Procedures for Hearing* for the purpose of determining those matters described in the *Petition*. The *Order* set forth notice and service requirements for the commencement hearing as required by Idaho Code § 42-1407, the issues to be addressed at the commencement hearing as well as the procedures for appearing, presenting evidence, and making statements or legal arguments at the hearing. The *Order* also required service to any Indian tribes residing within the boundaries or having interests in any portion of the Kootenai River basin water system.

On April 14, 2025, the State of Idaho filed an *Affidavit of Service* describing the service process and establishing compliance with the requirements set forth in the Court's *Order* and Idaho Code § 42-1407. The commencement hearing on the *Petition* was held February 24, 2026. The United States appeared in opposition to those elements of the *Petition* related to the deferral of *de minimis* domestic and stock water rights. 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

#### A. The proposed scope of the Kootenai River Basin Adjudication is consistent with the requirements of the McCarran Amendment.

##### 1. The McCarran Amendment requires a comprehensive adjudication of all rights on the source and its tributary sources.

Idaho Code § 42-1406D(1) provides that: "Effective 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." The statute also provides that the adjudication be commenced "within the terms of the McCarran amendment." I.C. § 42-1406D(1). "The McCarran Amendment waives federal sovereign immunity in certain general water adjudications, allowing the United States' and Indian tribes' water rights to be determined in state-court proceedings."<sup>1</sup> In *In Re SRBA Case No. 39576*, 128 Idaho 246, 251, 912 P.2d 614, 619 (1995); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 809-10 (1976); *United States v. Dist. Court in and for Eagle County, Colo.*, 401 U.S. 520,

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<sup>1</sup> The McCarran Amendment provides, in relevant part:

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(a).

524 (1971). This waiver or consent to state court jurisdiction also extends to tribal water rights. *Colorado River Water Conservation Dist.*, 424 U.S. at 809.

Compliance with the McCarran Amendment requires a comprehensive adjudication of all of the water rights on the stream system. In *United States v. Dist. Court in and for Eagle County, Colo.*, the United States Supreme Court, explained the requirement, quoting the amendment's sponsor, Senator McCarran as follows:

S. 18 is not intended . . . to be used for any other purpose than to allow the United States to be joined in a suit wherever it is necessary to adjudicate all of the rights of various owners on the given stream. This is so because unless all of the parties owning or in the process of acquiring water rights on a particular stream be joined as parties defendant, any subsequent decree would be of little value.

*United States v. Dist. Court in and for Eagle County, Colo.*, 401 U.S. at 525. (quoting S. Rep. No. 820755). In *Colorado River Water Conservation Dist.*, the United States Supreme Court enunciated the policy behind the requirement:

The clear federal policy evinced by [the McCarran Amendment] is the avoidance of piecemeal adjudication of water rights in river system. This policy is akin to that underlying the rule requiring that jurisdiction be yielded to the court first acquiring control of property, for the concern in such instances is with avoiding the generation of additional litigation through permitting inconsistent dispositions of property. This concern is heightened with respect to water rights, the relationships among which are highly interdependent. . . . The consent to jurisdiction given by the McCarran Amendment bespeaks policy that recognizes the availability of comprehensive state systems for adjudication of water rights as the means for achieving these goals.

*Id.* at 819. In *In Re Snake River Basin Water System*, 115 Idaho 1, 764 P.2d 78 (1988), the Idaho Supreme Court held that the McCarran Amendment required the Snake River Basin Adjudication to adjudicate the rights of all those who use a river system within a state, including those who use the water of the tributaries. *Id.* at 9, 764 P.2d at 86.

Accordingly, in order for the Kootenai River Basin Adjudication to be commenced within the terms of the McCarran Amendment, the Court must find that the proposed boundaries of the adjudication include all hydrologically connected surface and ground water sources within the system located in the State of Idaho and include all claims to the use of water within that same system.

**2. The proposed boundaries of the adjudication include all hydrologically connected surface and ground water sources within the Kootenai River basin water system.**

Idaho Code § 42-1406D(1) requires that an order commencing the adjudication define the source or sources within the state to be adjudicated. The Kootenai River Basin water system covers portions of Idaho located within Bonner County and Boundary County. The *Petition* more particularly describes the boundaries for the adjudication as follows:

Beginning at the northeast corner of the state of Idaho at a point located on the Canadian border described as northeast corner of Protracted Boundary 40, Township 65 North, Range 3 East, B.M. which marks the northeast corner of the state of Idaho and the northwest corner of the state of Montana;

Thence continuing southerly along the border shared by the state of Idaho and the state of Montana to a point in Bonner County on the eastern border of Idaho in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 15, Township 57 North, Range 3 East, B.M.;

Thence continuing northwesterly along the ridge lines and mountain peaks that separate the Callahan Creek drainage to the northeast from the Pack River drainage to the southwest to a point in Boundary County marking the peak of Bald Eagle Mountain in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, Township 60 North, Range 2 East, B.M.;

Thence continuing westerly and then northerly along the ridge lines and mountain peaks that separate the Pack River drainage to the south from the Deep Creek drainage to the north, crossing the county line between Boundary and Bonner counties twice, to the top of Dodge Peak in Boundary County in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 12, Township 60 North, Range 2 West, B.M.;

Thence continuing northerly along the ridge lines and mountain peaks that separate the Kootenai River drainage to the east from the Pack River drainage to the west, to the top of Harrison Peak in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 31, Township 62 North, Range 02 West, B.M.;

Thence, continuing northerly through Boundary County along the ridge lines and mountain peaks separating the Priest River drainage to the west from the Kootenai River drainage to the east, to a topographic high point located on the border shared by the state of Idaho and Canada, within Protracted Boundary 38, Township 65 North, Range 04 West, B.M.;

Thence continuing easterly along the northern border of the state of Idaho to the point of beginning.

Such that the water system includes all surface and ground waters within the proposed boundary which contain portions of Bonner and Boundary counties in Idaho. This includes, but is not limited to, the surface and ground waters of the Kootenai River drainage downstream from the border shared by Idaho and Montana and upstream from the Canadian border; those portions of Bog Creek, Blue Joe Creek and Grass Creek and drainages before such waters reach Canada, all of which are ultimately tributaries of the Kootenai River in Canada; that portion of Boundary Creek drainage within Idaho, downstream of where it enters Idaho and upstream of where it exits Idaho as it crosses the border shared by Idaho and Canada; those portions of Dodge Creek, Mission Creek, East Fork Mission Creek, Gillon Creek and the Moyie River drainages downstream from the border shared by Idaho and Canada; the Canuck Creek drainage downstream from the border shared by Idaho and Montana and upstream from the Canadian border; those portions of Faro Creek, Keno Creek, Skin Creek, Kingsley Creek and Lime Creek drainages downstream from the border shared by Idaho and Montana; those portions of Curley Creek within Idaho, upstream of the border shared by Idaho and Montana, and downstream of the border as it flows back into Idaho; those portions of Idamont Creek, Cabin Creek, Star Creek, Ruby Creek, North and South Callahan Creek, Benning Creek, West Fork Keeler Creek, Halverson Creek, and Cliff Creek drainages before such waters reach Montana, all of which are ultimately tributaries of the Kootenai River in Montana.

*Petition*, pp.4-5. The Court finds that the proposed boundaries for the Kootenai River Basin Adjudication satisfy the requirements of a McCarran Amendment adjudication.

**B. The deferral procedure for *de minimis* domestic and stock water claims is consistent with the requirements of the McCarran Amendment.**

**1. The deferral procedure for *de minimis* domestic and stock water claims.**

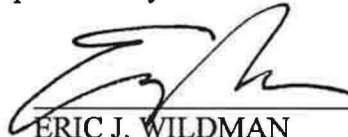
Idaho Code § 42-1406D(1) requires that a petition request that a commencement order be issued only if the court determines it is possible to defer the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11) and comply with the terms of the McCarran Amendment. The State of Idaho made such a request in the *Petition*. The Court finds the deferral procedure proposed by the State for *de minimis* domestic and stock water claims is consistent with the requirements of the McCarran Amendment for the reasons set forth in this Court's *Memorandum Decision on Optional Deferral Process* issued contemporaneously herewith. The Court's *Memorandum Decision on Optional Deferral Process* is incorporated herein by reference and will not be repeated.

### III.

#### CONCLUSION

For the reasons set forth above, the Court concludes that the adjudication of the Kootenai River basin water system as authorized by Idaho Code § 42-1406D and as proposed in the *Petition* constitutes a comprehensive determination of all of the rights of the system within the State of Idaho and therefore satisfies the terms of the McCarran Amendment. Having further concluded that the deferral procedure for *de minimis* domestic and stock water claims is within the terms of the McCarran Amendment, the Court will issue a separate order commencing the Kootenai River Basin Adjudication contemporaneously with this *Memorandum Decision*.

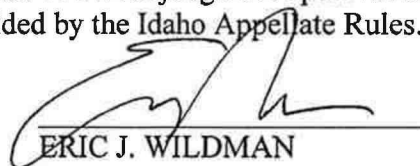
DATED: March 6, 2026

  
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 PETITION TO COMMENCE KOOTENAI RIVER BASIN ADJUDICATION were mailed on March 6, 2026, by first-class mail to the following:

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Valerie McCoy  
Chief Deputy Clerk