

**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. 59576
ADJUDICATION OF RIGHTS TO	)	
THE USE OF WATER FROM THE	)	NOTICE OF FILING PETITION
PALOUSE RIVER BASIN WATER	)	TO COMMENCE GENERAL
SYSTEM	)	ADJUDICATION OF WATER
	)	RIGHTS

---

TO: ALL PERSONS OWNING RIGHTS TO THE USE OF WATER FROM THE  
PALOUSE RIVER BASIN WATER SYSTEM

YOU ARE HEREBY NOTIFIED that the State of Idaho, by and through Lawrence G. Wasden, in his official capacity as the Attorney General for the State of Idaho, filed a *Petition to Commence Palouse River Basin Adjudication* to commence a general adjudication of water rights from the Palouse River basin water system on October 3, 2016, pursuant to Idaho Code § 42-1406B (Supp. 2008). A hearing on the *Petition* (called a commencement hearing) has been scheduled to begin Wednesday, January 18, 2017, at 9:30 A.M. Pacific Time (PT). The hearing will be held at the Federal Courthouse, 220 E. 5<sup>th</sup> Street, Room #304, Moscow, Idaho, before the Honorable Eric Wildman.

The purpose of the adjudication is to determine all rights arising under state or federal law to the use of surface and ground water from the Palouse River basin water system. **THE PURPOSE OF THIS NOTICE IS TO DESCRIBE BRIEFLY THE PETITION AND TO INFORM YOU OF THE MATTERS TO BE DETERMINED BY THE DISTRICT COURT AT THE COMMENCEMENT HEARING; NOTICE WILL BE GIVEN AT A LATER DATE AS TO WHEN AND WHERE TO FILE YOUR NOTICE OF CLAIM TO A WATER RIGHT.**

The *Petition* asks the court to enter an order (called a commencement order) starting a general adjudication of the Palouse River basin water system, authorizing the Director of the Idaho Department of Water Resources (Director) to investigate all uses of water from the water system and prepare a report of water rights, and directing all claimants of water rights from the water system to file a notice of claim to a water right with the Director unless claimants elect to defer the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11).

The *Petition* asks the court to determine the boundaries of the water system to be adjudicated in this action. The Director proposes to adjudicate that portion of the Palouse River basin within the state of Idaho. A map illustrating the Palouse River basin water

system and the proposed boundaries of the water system to be adjudicated is included in this notice.

The *Petition* lists the counties within the proposed boundaries of the water system and states that a portion of each county is within the proposed boundaries. There are no counties wholly contained in the proposed boundaries.

The *Petition* asks the court to require persons holding a permit for which proof of beneficial use was filed on or prior to the date the commencement order is issued to file a notice of claim.

The *Petition* asks the court to enter an order establishing a procedure to defer the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11). The Director's proposed process for the deferral of domestic and stock water rights is presented below.

The *Petition* asks the court to approve the manner in which the Director proposes to conduct the second round of notifying claimants of their duty to file a notice of claim. The first round of notice is described in Idaho Code § 42-1408(2)-(3); the second round of notice is described in Idaho Code § 42-1408(4).

In response to the *Petition*, the district court will determine the following matters, among others:

- a. The boundaries of the water system;
- b. Whether the boundaries of the water system as proposed by the *Petition* are in compliance with the terms of the McCarran Amendment;
- c. Whether the proposed deferral procedure (below) for the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11) is in compliance with the terms of the McCarran Amendment;
- d. Any other uses of water excluded from the adjudication proceedings; and
- e. Any other matter raised by the *Petition*.

THE DISTRICT COURT WILL HEAR EVIDENCE AND ARGUMENTS FROM ANY PERSONS IN RESPONSE TO ANY MATTER RAISED BY THE *PETITION*. ANY PERSON WISHING TO PRESENT EVIDENCE OR ARGUMENT AT THE COMMENCEMENT HEARING MUST COMPLY WITH CERTAIN PROCEDURES ORDERED BY THE DISTRICT COURT. The procedures are set forth in the *Order Setting Commencement Hearing and Procedures for Hearing*, issued by the district court on October 5, 2016. The *Order* addresses the requirements for the Commencement Hearing, including the following:

1. Each attorney who represents a person interested in the Palouse River Basin Adjudication or interested party acting *pro se* (representing yourself without an attorney) who intends to present evidence or argument at the Commencement Hearing shall file a *Notice of Appearance* with the district court on or before 5:00 P.M. PT, January 11, 2017.

2. Each attorney or *pro se* litigant who intends to present evidence shall also file a pre-hearing statement with the district court on or before 5:00 P.M. PT, January 11, 2017. The pre-hearing statement shall include:
  - a. A statement of issues raised;
  - b. A list of documents to be offered into evidence;
  - c. A list of witnesses; and
  - d. The estimated amount of time needed for direct examination of each witness.
3. Each attorney or *pro se* litigant who intends to present legal argument shall also lodge with the district court a brief or memorandum of law in support of that attorney's or *pro se* litigant's legal argument on or before 5:00 P.M. PT, January 11, 2017.
4. Each attorney or *pro se* litigant shall serve the State of Idaho via the Office of the Attorney General, the Director and the United States with any papers filed or lodged with the district court on or before 5:00 p.m. PT, January 11, 2017. The addresses for service are as follows:
  - a. Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
PO Box 83720  
Boise, ID 83720-0010
  - b. Director, Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098
  - c. United States Department of Justice  
Environment & Natural Resources Division  
550 West Fort Street, MCS 033  
Boise, ID 83724
5. All filings and lodgings with the district court shall be made with the clerk of the district court under the above-captioned case number and title. The address for filing and lodging is as follows:

Palouse River Basin Adjudication  
c/o SRBA District Court  
PO Box 2707  
Twin Falls, ID 83303
6. Fax filing is also available pursuant to Rule 5(d)(3) of the Idaho Rules of Civil Procedure, though faxed documents are limited to ten (10) pages,

including attachments and exhibits. Documents can be fax filed at (208) 736-2121.

7. The district court may relieve any attorney or any *pro se* litigant from the requirements of the *Order* for good cause shown.

Copies of the *Petition* and the *Order* may be obtained at [www.idwr.idaho.gov/water-rights/adjudication/NIA/PRBA.html](http://www.idwr.idaho.gov/water-rights/adjudication/NIA/PRBA.html) or from any office of the Idaho Department of Water Resources (IDWR) or from the district court.

#### PROPOSED PROCESS TO DEFER THE ADJUDICATION OF DOMESTIC AND STOCK WATER RIGHTS:

All claimants of *de minimis* (small) domestic and/or stock water rights as defined in Idaho Code § 42-1401A(4) and (11) (D&S) 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 Palouse 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 States 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. D&S claimants are also required to pay their own filing fees and costs of publication. 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 Palouse 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.

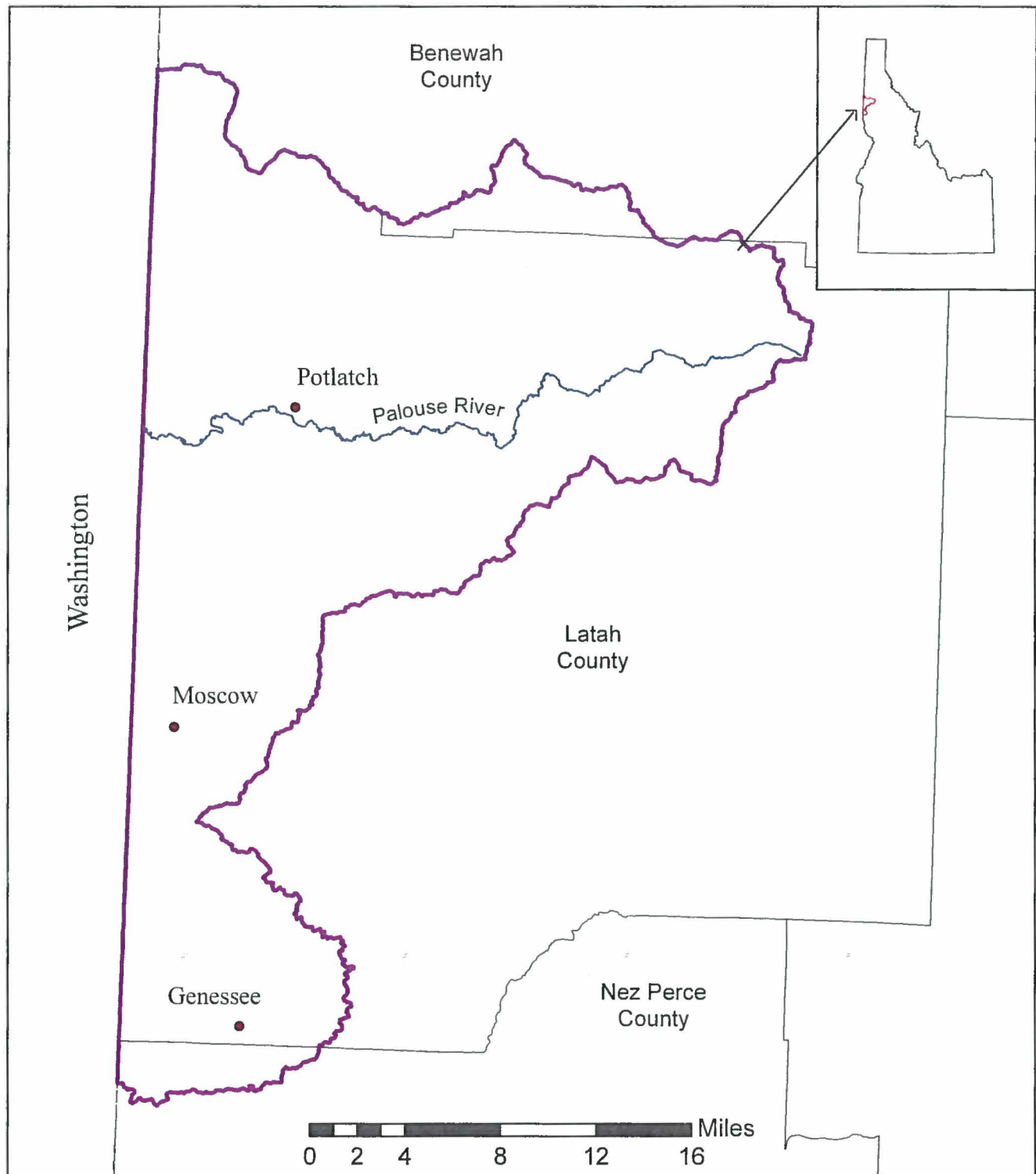
The proposed process above meets the requirements of the McCarran Amendment, 43 U.S.C. § 666, because all water users, including those claiming *de minimis* D&S rights, will be served and made parties to this adjudication, and will eventually have their rights adjudicated, either in this phase of the proceeding or pursuant to the proposed procedures set forth in this notice.

DATED this 2nd day of December.

Gary Spackman, Director  
Idaho Department of Water Resources



# Palouse River Basin Adjudication



## Legend

- Cities
- Palouse River Basin Water System Boundary
- County Boundaries

