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ISB No. 3444

DISTRICT COURT - <i>CFPRBA</i> Fifth Judicial District County of Twin Falls - State of Idaho	
OCT 23 2020	
By _____	Clerk
_____	Deputy Clerk

Copies of documents filed with the court in this matter should be served on the above address and the Director of the Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

)	CASE NO. 00-69576
In Re the General Adjudication of)	
Rights to the Use of Water from the)	PETITION TO COMMENCE CLARK FORK-
Clark Fork-Pend Oreille River)	PEND OREILLE RIVER BASINS
Basins Water System)	ADJUDICATION
)	
_____)	Fee: Exempt

The State of Idaho, by and through Attorney General Lawrence Wasden, petitions and alleges as follows:

NATURE OF THE CASE

1. This is 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 Clark Fork-Pend Oreille River basins water system and for the administration of such rights.

JURISDICTION

2. This court has jurisdiction under state law in accordance with chapter 14, title 42, Idaho Code.

3. This court has jurisdiction of all claims of the United States under the McCarran Amendment, 43 U.S.C. § 666, which states in part as follows:

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.

PETITIONER AND PARTIES

4. Petitioner is the State of Idaho, through the Idaho Attorney General. The State of Idaho in its proprietary, governmental and representative capacities claims some right, title or interest to the use of waters of the Clark Fork-Pend Oreille River basins water system. This petition is made at the request of the Director of the Idaho Department of Water Resources ("Director") pursuant to Idaho Code § 42-1405(2). The public interest and necessity would be served by a general adjudication of the Clark Fork-Pend Oreille River basins water system because the adjudication would provide a complete and accurate recording of existing water rights, thereby helping the state and its residents better understand and manage Idaho's water resources.

5. The United States in its proprietary, governmental, trustee and representative capacities is the owner of or is in the process of acquiring water rights by appropriation under state law, by purchase, by exchange, by reservation under federal law or otherwise, and the

United States is a necessary party to the general adjudication of rights to the use of water from the Clark Fork-Pend Oreille River basins water system.

6. Though petitioner has knowledge of some defendants, the true names or capacities, whether individual, corporate, governmental, associate, representative, or otherwise, of defendants named herein as “all claimants to the use of water from the Clark Fork-Pend Oreille River basins water system” are not known to petitioner; however, the Director will identify and serve all persons in accordance with the procedures set forth in Idaho Code § 42-1408.

ALLEGATIONS IN SUPPORT OF COMMENCEMENT OF THE GENERAL ADJUDICATION

Authority

7. Idaho Code § 42-1406B(1) authorizes the filing of a petition with 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 of the Clark Fork-Pend Oreille River basins water system provided that the petition includes a request for the deferral of the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A, and a request that the 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 subsections (4) and (11) of Idaho Code § 42-1401A, within the terms of the McCarran Amendment.

8. Idaho Code § 42-1406B(2) provides that the petitioner may petition any district court in which part of the water source is located or before a court of special jurisdiction for water right adjudications. Unless otherwise ordered by the Supreme Court, special jurisdiction

for the water rights adjudication authorized by this section shall reside in the Snake River Basin Adjudication District Court of the Fifth Judicial District of the State of Idaho.

9. On September 29, 2006, the Idaho Supreme Court issued a *Provisional Order Re: Appointment of District Judge, Confirmation of Special Jurisdiction and Determination of Venue for the General Adjudications of the Coeur d'Alene-Spokane River Basin, Palouse River Basin and the Clark Fork-Pend Oreille River Basins*, designating the Snake River Basin Adjudication District Court of the Fifth Judicial District of the State of Idaho as the county and court of venue for these general adjudication proceedings.

Boundaries of the Water System

10. Petitioner proposes to adjudicate the rights to the use of surface and ground water of the Clark Fork-Pend Oreille River basins water system.

11. The proposed boundaries of the water system are described as follows:

Beginning at the northwest corner of the state of Idaho at a point marking the northwest corner of Boundary County located in Section 7, Township 65 North, Range 5 West, B.M.; thence continuing west along the northern boundary of the state of Idaho to a topographic high point located within Protracted Boundary 38, Township 65 North, Range 04 West, B.M.;

Thence, continuing southerly through Boundary County along the ridge lines and mountain peaks separating the Priest River drainage and the Kootenai River drainage to 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 in an easterly and southerly direction along the ridge lines and mountain peaks that separates the Kootenai River drainage from the Pend Oreille River drainage, crossing the county line between Boundary and Bonner counties three times to a point in Bonner county on the eastern boarder 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 south along the border shared by Idaho and Montana to the point where the boarder intersects the Shoshone County border within the SW corner of Government Lot 4, Section 35, Township 54N, Range 2 East, B.M.;

Thence continuing westerly along the ridge lines and mountain peaks that separate the Coeur d'Alene River drainage to the south from the Pend Oreille River drainage to the north, to a point on Chilco Mountain in Kootenai County in the SE¼ NE¼ of Section 35, Township 53 North, Range 2 West, B.M.;

Thence continuing northerly and westerly along the ridge lines, mountain peaks and hills separating the Coeur d'Alene River drainage from the Pend Oreille River drainage to a point on the western boundary of the state of Idaho in Government Lot 2 (SE¼NW¼) of Section 12, Township 54 North, Range 6 West, B.M.;

Thence north along the western boundary of the state of Idaho to the point of beginning.

Such that the water system includes all surface water and ground waters within the proposed boundary. This includes, but is not limited to, the surface and ground waters of the Pend Oreille River drainage before such waters reach Washington, the Clark Fork River drainage downstream from the border shared by Idaho and Montana, the Upper Priest River and Priest River Drainage tributary to the Pend Oreille River, portions of the Blue Creek, Elk Creek, and Gold Creek drainages before such water reaches Montana, all of which are tributary to the Clark Fork River. All of these drainages are ultimately tributaries of the Pend Oreille River, and contain portions of Boundary, Benewah and Kootenai Counties in Idaho.

12. The proposed boundaries are illustrated on Exhibit A, which is attached hereto and incorporated by reference.

Scope of Adjudication

13. There are no classes of uses proposed to be excluded from the adjudication.
14. Petitioner proposes to include in the adjudication persons holding a permit, as of the date of entry of the order commencing the general adjudication, for which proof of beneficial use was filed on or prior to the date of entry of the order commencing the general adjudication.
15. Petitioner proposes the deferral of the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A.
16. Petitioner requests 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 subsections (4) and (11) of Idaho Code § 42-1401A within the terms of the McCarran Amendment.

List of Counties

17. No counties are wholly located within the proposed boundaries of the water system.

18. The counties where only a portion of the county is included within the proposed boundaries of the water system are: Boundary, Bonner, and Kootenai.

Service

19. Service of claimants will occur as set forth in subsections (2) and (3) of Idaho Code § 42-1408.

20. Service of claimants not disclosed following completion of the service required by subsections (2) and (3) of Idaho Code § 42-1408 will occur as set forth in Idaho Code § 42-1408(4).

21. The method of service set forth at Idaho Code § 42-1408 and in paragraphs 19 and 20 above is reasonably calculated to notify all claimants within the water system of the commencement of the general adjudication.

PRAYER FOR RELIEF

WHEREFORE, the petitioner petitions this court as follows:

1. To enter an order in accordance with Idaho Code § 42-1406B that does all of 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 Clark Fork-Pend Oreille River basins water system within the state of Idaho;

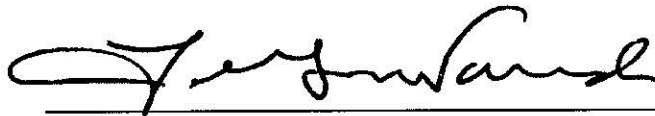
- b. Describes the boundaries of the water system as set forth in paragraph 11;
- c. Lists the counties wholly or partly located within the boundaries of the water system;
- d. Determines that it is possible to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (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 Idaho Code § 42-1401A;
- 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 as set forth in paragraph 20;
- h. Authorizes the Director to investigate all uses of water from the system in accordance with Idaho Code § 42-1410 and to file a report in accordance with Idaho Code § 42-1411; and
- i. Contains a statement that the district court files will contain affidavits of service and other documents stating the persons served with a copy of the notice of commencement order.

2. To determine all rights to the use of water within the water system, including those of the United States.

3. To make all determinations necessary and proper for the administration of the water rights determined in the general adjudication.

4. For such other and further relief as the court deems just and proper.

DATED this 23rd day of October, 2020.

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden", is written over a horizontal line.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

Clark Fork-Pend Oreille River Basin Water System

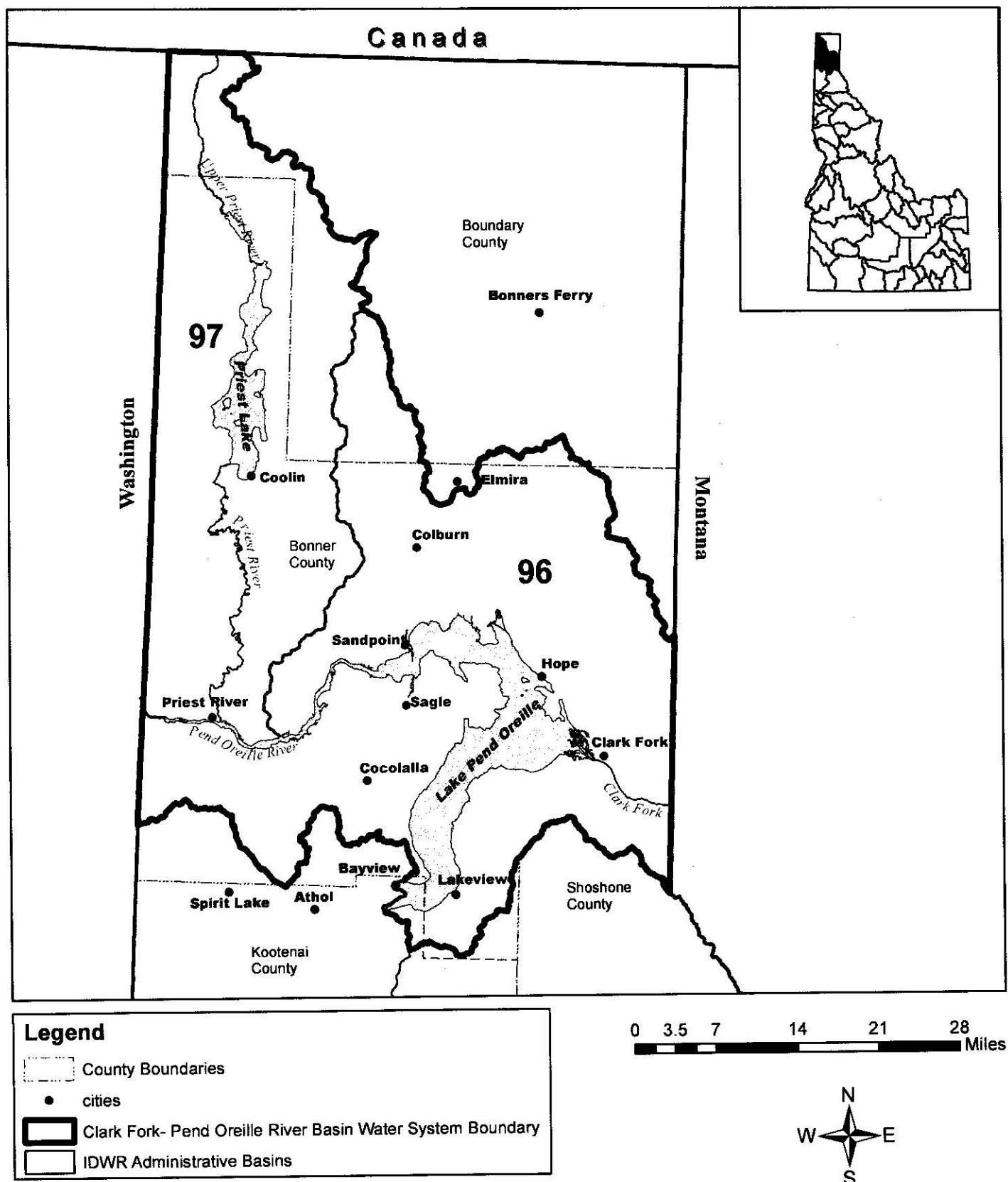


Exhibit A