

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

OCT 26 2020

By _____ Clerk *[Signature]*
 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: 69576
THE USE OF WATER FROM THE)	
CLARK FORK-POND OREILLE)	ORDER SETTING
RIVER BASIN WATER SYSTEM)	COMMENCEMENT HEARING AND
)	PROCEDURES FOR HEARING
)	

I.

BRIEF PROCEDURAL BACKGROUND

Idaho Code § 42-1406B(1) authorizes the filing of a petition to commence a general water right adjudication within the terms of the McCarran Amendment, 43 U.S.C. § 666, for the determination of the water rights from surface and ground water sources of the Clark Fork-Pend Oreille River Basin water system.

Idaho Code § 42-1406B(2) provides that the petition may be filed in any district court in which any part of the water source is located or before a court of special jurisdiction for water right adjudications. The statute also provides that unless otherwise ordered by the Supreme Court, special jurisdiction for the water rights adjudication resides in 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.

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, the 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 this general adjudication proceeding.

On October 23, 2020, the State of Idaho ("Petitioner") filed a petition pursuant to Idaho Code § 42-1406B(1) for the commencement of a general adjudication *inter se* of all rights arising under state or federal law to the use of surface and ground water for the Clark Fork-Pend Oreille River Basin water system and for the administration of such rights ("*Petition*"). The *Petition* provides that the commencement of the general adjudication is made conditional on a determination by the district court that it is possible to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, within the terms of the McCarran amendment.

II.

NOTICE OF HEARING

IT IS HEREBY ORDERED that the commencement hearing on the *Petition* shall be held on **January 21, 2021, at 9:00 a.m. (Pacific Time) at the Snake River Basin Adjudication Courthouse, 253 – 3rd Avenue North, Twin Falls, Idaho** ("*Commencement Hearing*"). **This hearing will be conducted using the ZOOM remote hearing application. Instructions for Zoom are attached to this Order.**

III.

ORDER ON COMMENCEMENT HEARING NOTICE AND PROCEDURES

IT IS FURTHER HEREBY ORDERED as follows:

1. The Petitioner is directed to prepare, in plain and concise language, and publish a notice of filing of a petition for entry of an order commencing a general adjudication ("*Notice of Filing Petition*") for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system proposed to be adjudicated is located. If there is no newspaper published within a particular county, then notice shall be published in a newspaper having general circulation in that county. The Petitioner shall also serve the *Notice of Filing Petition* on the United States, the Director of the Idaho Department of Water Resources, and on any Indian tribe residing in the boundaries or having interests in any portion of the water system, and file affidavits of service of the *Notice of Filing Petition* with the district court upon completion of service.

2. The *Notice of Filing Petition* shall contain the following:
 - a. A description of the boundaries of the water system proposed for the general adjudication.
 - b. A statement of the date, place and time of hearing on *Petition*.
 - c. A concise statement of the matters raised by the *Petition* and proposed to be considered by the district court, including:
 - (1) Whether the boundaries of the water system as proposed by the *Petition* are in compliance with the terms of the McCarran Amendment;
 - (2) A proposal for the process to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code.
 - (3) Whether the proposed deferral procedure for the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, is in compliance with the terms of the McCarran Amendment;
 - (4) Any other uses of water excluded from the adjudication proceedings;
 - (5) Any other matter raised by the *Petition*.
 - d. A statement that the district court will hear evidence and legal argument from any person in response to any matter raised by the *Petition*.

3. Each attorney who represents any interested party in the general adjudication or interested party proceeding *pro se* who intends to present evidence or legal argument at the Commencement Hearing shall file a *Notice of Appearance* with the district court on or before 5:00 p.m. (Pacific Time), January 14, 2021.

4. Each attorney or *pro se* litigant who intends to present evidence shall also file with the district court on or before 5:00 p.m. (Pacific Time), January 14, 2021, a pre-hearing statement that includes all of the following:

- a. A statement of issues raised;
- b. A list of documents to be offered into evidence at the hearing;
- c. A list of witnesses; and

d. The estimated amount of time needed for direct examination of each witness.

5. 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. (Pacific Time), January 14, 2021.

6. Each attorney or *pro se* litigant shall serve the State of Idaho, Office of the Attorney General, the Director of the Idaho Department of Water Resources, and the United States with any papers filed or lodged with the district court on or before 5:00 p.m. (Pacific Time), January 14, 2021. 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

7. 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:

Clark Fork-Pend Oreille River Basin Adjudication
c/o SRBA District Court
PO Box 2707
Twin Falls, ID 83303-2707

Fax filing is also available pursuant to I.R.C.P. 5(e)(2), provided however that documents are limited to ten (10) pages, including attachments and exhibits. Documents can be filed at (208) 736-2121.

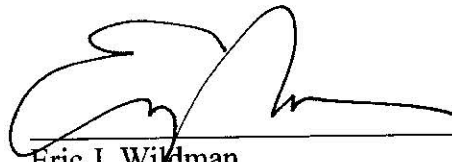
8. The district court may relieve any attorney or *pro se* litigant from the requirements of this *Order* for good cause shown.

IT IS FURTHER HEREBY ORDERED that the Petitioner is directed to include the provisions of this *Order* in the *Notice of Filing Petition*.

IT IS FURTHER HEREBY ORDERED that the Petitioner is directed to provide service to any Indian tribes who reside within the boundaries or have interests in any portion of the Clark Fork-Pend Oreille River Basin water system a copy of the *Petition* and *Notice of Filing Petition*, and all of the briefs, memoranda and statements filed by the Petitioner for the Commencement Hearing.

IT IS SO ORDERED.

DATED: October 26, 2020.

A handwritten signature in black ink, appearing to read 'Eric J. Wildman', is written over a horizontal line.

Eric J. Wildman
Presiding Judge

HOW TO ACCESS YOUR HEARING USING ZOOM:

You are receiving an invitation for a Court Hearing that uses the remote Zoom meeting application. You may appear at this hearing using a telephone or online with a video or audio connection.

The details for your hearing are below:

Hearing on Petition for Commencement of the Clark Fork-Pend Oreille River Basin Adjudication

Time: Jan 21, 2021 09:00 AM Pacific Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/96217063752?pwd=MTltWmVRRTNnMjVEaHF3ZlZ0a0FPQT09>

Meeting ID: 962 1706 3752

Passcode: 779348

One tap mobile

+12133388477,,96217063752#,,,,,0#,,779348# US (Los Angeles)

Dial by your location

+1 213 338 8477 US

Meeting ID: 962 1706 3752

Passcode: 779348

Find your local number: <https://zoom.us/u/adzOYHFner>

1. How to join the meeting by telephone

- Dial the phone number listed above.
- When prompted, enter the meeting ID provided above, followed by #.
- When prompted, enter the meeting password provided above.
- More information on how to use a telephone when connecting to a Zoom meeting can be found here:
<https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>

2. How to join the meeting online

- In your browser enter the link <https://www.zoom.us/join>
- Enter the meeting ID provided above. You may see a spinning wheel while the connection is made.
- Follow the instructions on the screen to either download and install the Zoom client, or to join the meeting via your web browser.
- When prompted, enter the meeting password provided above.

- Once the connection is made, you will be placed in a Waiting Room. A message will appear "Please wait, the meeting host will let you in soon."
- When court begins, you will be brought into the meeting from the Waiting Room.

3. Video (when joining online)

- Start your video by clicking **Start Video**, located in the lower-left corner of the window.

4. Audio

- Your sound will be on mute upon entry.
- Remain muted unless you are asked to speak to the court. Please be sure you have no background noise while speaking. You may be muted or removed from the hearing if causing a disruption.
- To unmute yourself, click the **Unmute** button, located in the lower-left corner of the window.
- If joining only by telephone, press *6 to toggle between unmute/mute.

5. Courtroom standards

- Participants should dress and act as if they were physically in the courtroom.
- Do not talk over others.
- If joining online, you may raise your hand from the **Participants** tab at the bottom of the window if you would like to speak with the court or if you need to have a conversation with your counsel.

6. Assistance

- Additional resources on how to use Zoom to participate in a remote court hearing can be found at <http://isc.idaho.gov/isc-zoom>

If you have questions regarding this remote hearing or the steps above, please contact the Deputy Clerk of the Snake River Basin Adjudication District Court at 208-736-3011.

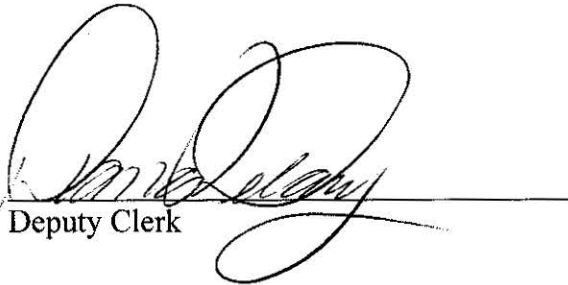
CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER SETTING COMMENCEMENT HEARING AND PROCEDURES FOR HEARING** were mailed on October 26, 2020, by first-class mail to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

Gary Spackman, Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724



Deputy Clerk