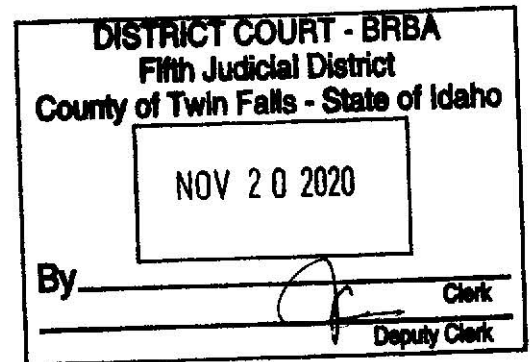


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ISB No. 3444



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
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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)	CASE NO. 00-79576
Rights to the Use of Water from the)	
Bear River Basin Water System)	PETITION TO COMMENCE BEAR RIVER
)	BASIN 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 Bear River basin water system and for the administration of such rights.

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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 Bear River basin 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 Bear River basin water system because the adjudication would provide a complete and accurate recording of existing water rights, thereby helping the state and its residents to 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 Bear River basin 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 Bear River basin 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 § 42-1406C(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 Bear River basin 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 § 42-1406C(3) provides that the petitioner may petition 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 June 17, 2020, 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 Bear River Basin*, appointing the presiding judge of the Snake River Basin

Adjudication District Court as the presiding judge over these general adjudication proceedings, conferring special jurisdiction for these general adjudication proceedings in the Snake River Basin Adjudication District Court, and 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 Bear River basin water system.

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

Beginning at the southeast corner of the state of Idaho at a point marking the southeast corner of Bear Lake County located at the southeast corner of Government Lot 3, Section 26, Township 16 South, Range 46 East, B.M.; thence continuing west along the southern boundary of the state of Idaho to a point in Cassia county located at the southwest corner of Government Lot 7 (SE¼SE¼), Section 28, Township 16 South, Range 28 East, B.M.;

Thence continuing northeasterly along the ridge lines and mountain peaks of the Black Pine and Deep Creek Mountains to a point on Deep Creek Peak in Power county located in the NE¼ of the NE¼ of Section 13, Township 11 South, Range 32 East, B.M.;

Thence continuing southeasterly then turning northerly following the ridge lines and mountain peaks that mark the southern edges of the boundary of the Bannock Creek drainage to a point on Bradley Mountain in Power County located in the SE¼ of the NW¼ of Section 14, Township 10 South, Range 34 East, B.M.;

Thence continuing southeasterly along the ridge lines and mountain peaks separating the Dairy Creek Drainage to the southwest and the Hawkins Creek drainage to the northeast to a point on the boundary line separating Bannock and Oneida counties in the NE¼ of the SE¼ of Section 22, Township 11 South, Range 35 East, B.M.;

Thence continuing southeasterly along the boundary separating Bannock and Oneida counties, diverting southerly from the county boundary briefly for about 3.5 miles in Township 12 South, Range 36 East, before rejoining and continuing to follow the county boundary to a point where Bannock, Franklin, and Oneida

county boundaries intersect in the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 22, Township 13 South, Range 37 East, B.M.;

Thence continuing southerly for about two miles until reaching Oxford Peak and turning northeasterly following the ridge lines and mountain peaks of the Portneuf Range crossing into Caribou County to a peak on Buckskin Mountain in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 22, Township 09 South, Range 39 East, B.M.;

Thence continuing east and then northerly moving along the ridge lines and mountain peaks to a point in Caribou County located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 33, Township 06 South, Range 41 East, B.M.;

Thence continuing southeasterly along the ridge lines and mountain peaks of the Aspen Range to a point on the boundary line separating Caribou and Bear Lake counties located on the boundary between the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 9 South, Range 43 East B.M. and Government Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 31, Township 9 South, Range 44 East B.M.;

Thence continuing southeasterly along the county line to a point on the eastern boundary of the state of Idaho in Government Lot 1 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 35, Township 10 South, Range 46 East, B.M.; thence south along the eastern 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 water of Beaver Creek, Christy Creek, Deep Creek, Cub River, Logan River, Malad River, Spring Creek, and Worm Creek drainages before such waters reach Utah; the Erwine Creek, Garrett Creek, Giraffe Creek, North Willow Creek, Poison Creek, Potato Creek, and Robinson Creek Drainages before such waters reach Wyoming; the Raymond and Salt Creek drainages after such waters cross into Idaho from Wyoming. All of these drainages are ultimately tributaries of the Bear River in Utah, except for the Deep Creek Drainage which is tributary to the Great Salt Lake, and contain portions of Bannock, Bear Lake, Caribou, Cassia, Franklin, Oneida, and Power 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. Bear Lake County is located fully 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: Bannock County; Caribou County; Cassia County, Franklin County; Oneida County; and Power County.

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 § 42-1406C 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 Bear River basin 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

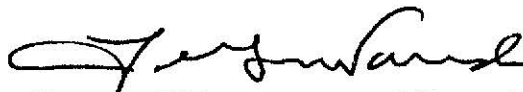
i. Contains a statement that the district court files will contain affidavits of service and other documents stating the persons served with a copy of the notice of commencement order.

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 20th day of November, 2020.



LAWRENCE G. WASDEN
Attorney General
State of Idaho

Bear River Basin Water System

- Cities
- IDWR Administrative Basins
- Bear River Basin Water System Boundary
- Counties

0 10 20 Miles

