DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
NOV 1 2 2008
By

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 THE USE OF WATER FROM THE COEUR D'ALENE-SPOKANE RIVER BASIN WATER SYSTEM	**Case No: 49576** **ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS* DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER BASIN ADJUDICATION**

Pursuant to the *Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stock Water Claims* ("*Stipulation*") entered into between the State of Idaho and the United States regarding the deferral of *de minimis* domestic and stockwater claims and filed in the above-captioned matter; the ***Memorandum Decision on Petition to Commence Coeur d'Alene Spokane River Basin General Adjudication*** and the ***Commencement Order for the Coeur d'Alene-Spokane River Basin Adjudication*** entered in the above-captioned matter; the following procedures are ordered for Case No. 49576, *In Re: The General Adjudication of the Rights to the use of Water from the Coeur d'Alene-Spokane River Basin Water System* ("CSRBA"):

I.
DEFERRAL PROCEDURE FOR *DE MINIMIS* DOMESTIC AND STOCKWATER CLAIMS

1. All claimants of *de minimis* domestic and stock water uses as defined in Idaho Code § 42-1401A(4) and (11), (hereinafter referred to as *de minimis* claimants) shall be joined as parties in this proceeding and will be bound by all decrees entered in this case, including the final decree. Any objections which a *de minimis* claimant or any other claimant may have to any and all claims being adjudicated in this proceeding must be timely raised in this proceeding in accordance with Idaho Code § 42-1412 or be forever barred.

2. *De minimis* claimants may elect to have their claims fully adjudicated now or to postpone the adjudication of their claims by following the alternative procedure set forth in paragraph 3, *infra.* If a *de minimis* claimant elects to have his or her domestic or stock water claims (or both) fully adjudicated now, then the *de minimis* claimant must file a notice of claim as provided by Idaho Code § 42-1409 and pay any filing fees required by Idaho Code § 42-1414.

3. *De minimis* claimants may elect to defer adjudication of their claims to a later time in this proceeding; provided however, each deferred claim when finally adjudicated shall be limited to no more than those amounts and for those uses set forth in Idaho Code § 42-1401A(4) and (11) as enacted by the Act of March 24, 1997, ch 374, 1997 Idaho Sess. Laws 1192. Additionally, each *de minimis* claimant must agree to have any domestic or stock water claim decreed prior to seeking authorization from the Director to change the point of diversion, place of use, purpose of use, or period of use; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of each right to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. There shall be no presumption that either the diversion requirement or the actual consumptive use for the water right to be changed was equal to 13,000 gallons per day or any other quantity greater than actual historic use. If this option is elected, a deferred *de*

minimis claimant will not be required to file a notice of claim at this time or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

A. Election of this procedure will not result in a loss of such *de minimis* domestic or stock water claim nor will such deferred *de minimis* claimant be precluded from establishing the requisite elements of his or her *de minimis* claim at a subsequent time using the summary procedure described herein.

B. As provided by Idaho Code § 42-604, as rights in a basin are adjudicated, the Idaho Department of Water Resources will establish water districts. If a call is made for water within a water district, the Director will administer all rights within the water district pursuant to Idaho Code § 42-607. A claimant who has elected to defer adjudication of a *de minimis* domestic or stock water claim will be required to seek a final adjudication of the claim prior to requesting distribution pursuant to Idaho Code §42-607.

C. In order to obtain an adjudicated water right, a claimant of a deferred *de minimis* domestic or stock water claim shall file a motion for determination of the claim with this court.

D. The following provisions are required to institute a determination of a deferred *de minimis* domestic or stock water claim.

1. The deferred *de minimis* claimant shall file with this district court a motion for determination of the domestic and stock water claim with an attached notice of claim on a form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons against whom relief is sought. The claimant shall also cause to be published a notice of the pendency and purpose of the motion once a week for not less than three (3) weeks in a newspaper of general circulation in the county in which the point of diversion is located or as otherwise required by the court. Service upon the United States shall be accomplished by sending a copy of the motion and claim form by certified mail to the United States Attorney for the District of Idaho and United States Attorney General in Washington, D.C.

2. Any party who objects to the claim shall, within forty-five (45) days from the date of the first publication of the notice, file with the district court written

notice of such objection stating the reasons for the objection. A copy of an objection shall be served on the State of Idaho, the Director, the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.

3. The Director within thirty (30) days of the expiration of the time fixed to file an objection with the district court, shall file with the district court notification as to whether the Director will conduct an examination of the claim and whether the Director will prepare for submittal to the district court a report on the claim. The Director may commence an examination of the water system in accordance with the provisions of Idaho Code § 42-1410. Notification to the district court that a report will be prepared shall include an approximation of the time when the report will be completed, and an estimate of the Director's costs that will be incurred in conducting the examination and in preparing the report. A deferred *de minimis* claimant shall then be required to advance to the Director the estimated costs of conducting the examination and of preparing the report. Prior to the filing of the report with the district court, the deferred *de minimis* claimant shall pay the balance of the Director's verified costs or be refunded any unused estimated costs advanced to the Director. In the event the deferred *de minimum* claimant shall contest the Director's costs, the district court shall then determine a reasonable cost to be paid by the deferred *de minimis* claimant.

4. The deferred *de minimis* claimants shall be required to pay the following additional costs and expenses of the proceeding: Any filing fees of the claimant, and costs of publication. Pursuant to 43 U.S.C. § 666 no judgment for costs shall be assessed against the United States.

5. The Director shall file the report with the district court upon completion and shall send a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. Objections to the report of the Director, responses to the objections, and hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412.

6. For those cases in which the Director notifies the district court that the Director does not intend to prepare a report, the district court will proceed with a

hearing, and any party having filed a timely objection with the district court may appear and challenge the claim. The district court may order the Director to prepare a report following a hearing on the deferred *de minimis* claimant's motion.

7. The district court clerk shall not accept for filing any motion under this procedure unless the claimant certifies on the original document the date and the manner of service of the motion on the State of Idaho, the Director, the United States, and the persons against whom relief is sought.

8. The deferred *de minimis* claimant shall have the burdens of proof and of persuasion in establishing each and every element of his or her claim.

9. Venue for hearings on deferred domestic and stock water claims shall be in the county in which the point of diversion is located unless otherwise ordered by this district court.

E. Appeals of any orders or decrees entered under this summary procedure shall be governed by the rules applicable to appeals of orders entered in the Coeur d'Alene-Spokane River Basin Water System.

F. The district court retains continuing jurisdiction of the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred *de minimis* domestic or stock water claims. The district court on the motion of any party hereto, including a successor-in-interest, may adjudicate a deferred *de minimis* domestic or stock water claim under the alternative procedure set forth in this stipulation.

II.
PROCEDURES FOR *DE MINIMIS* WATER USERS INITIALLY ELECTING TO DEFER BUT LATER DECIDING TO FILE PRIOR TO THE ENTRY OF A FINAL UNIFIED DECREE OR FURTHER ORDER OF THE COURT

Until further order of the Court, the alternative procedure for adjudicating *de minimis* domestic or stockwater claims as set forth in paragraph 3 above is superseded by

the following procedure. Water users who initially elected to defer the filing of a claim for a *de minimis* domestic or stockwater use and later decide to file a claim after the deadline for timely filing the claim has expired but prior to the entry of a final unified decree or other further order governing procedures for filing *de minimis* domestic or stockwater use shall follow the same procedures established in the CSRBA for filing late notices of claim, provided however, the claim will not be subject to a late filing fee.

IT IS SO ORDERED

Dated November 12, 2008

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF *DE MINIMIS* DOMESTIC AND STOCKWATER CLAIMS IN THE COEUR D'ALENE-SPOKANE RIVER BASIN ADJUDICATION** were mailed on November 12, 2008, by first-class mail to the following:

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