

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

JUN 15 2021

By _____
Clerk

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
THE USE OF WATER FROM THE
BEAR RIVER BASIN WATER
SYSTEM
_____)

) Case No: 79576
)
) MEMORANDUM DECISION ON
) OPTIONAL DEFERRAL PROCESS
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I
BACKGROUND

In 2020, the legislature determined that “[e]ffective management of the waters of the Bear River basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water be determined.” I.C. § 42-1406C(1). It therefore enacted Idaho Code § 42-1406C. That statute authorizes the filing of a petition to commence an adjudication of the waters rights from surface water and ground water sources in the Bear River basin.

On November 20, 2020, the State filed a *Petition* to commence a general adjudication of all rights arising under state or federal law to the use of surface and ground waters from the Bear River basin water system. The Court will refer to the proposed adjudication as the Bear River Basin Adjudication (“BRBA”). The *Petition* recognizes “[t]here are no classes of uses proposed to be excluded from the adjudication.” However, it proposes a process for the optional deferral

of the adjudication of domestic and stock water rights as defined by subsections (4)¹ and (11)² of Idaho Code § 42-1401A. The Court will collectively refer to these domestic and stock water rights as “*de minimis* rights.” The *Petition* requests the Court issue a commencement order only if it determines it is possible to defer the adjudication of *de minimis* rights within the terms of the McCarran Amendment. The State supports its *Petition* with a *Prehearing Statement and Memorandum of Law*.

The Court subsequently entered an *Order* requiring the State to take certain actions on its *Petition*. It required the State to prepare a *Notice of Filing Petition* containing the information and enclosures required under Idaho Code § 42-1407(3). The State was required to publish that *Notice* for three consecutive weeks in a newspaper of general circulation in each county in which any part of the water system proposed to be adjudicated is located. It was further required to serve the *Notice* on the United States, the Director of the Idaho Department of Water Resources, and on any Indian tribe residing in the proposed adjudication boundaries or having interests in any portion of the water system. On March 3, 2021, the State filed an *Affidavit of Service* asserting that the *Notice* was published and served in compliance with the requirements of the Court’s *Order*. In its *Notice*, the State proposes a process through which the holder of a *de minimis* right may elect to defer the adjudication of that right to a later date in the BRBA. The proposed process is set forth in its entirety below and will be referred to herein as “the optional deferral process.”

The Court set a commencement hearing on the *Petition* for March 5, 2021. It required anyone intending to present evidence or argument to file a notice of appearance with the Court by February 25, 2021. The United States filed a *Notice of Appearance* on February 25, 2021. It requested additional time to consider whether the optional deferral process satisfies the

¹ Idaho Code § 42-1401A(4) defines “Domestic use” as “(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (½) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or (b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.” I.C. § 42-111.

² Idaho Code § 42-1401A(11) defines “Stock watering use” as “the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.”

McCarran Amendment.³ The Court granted the request and continued the commencement hearing.

On April 30, 2021, the United States filed a document entitled *Special Appearance and Opposition to State of Idaho's Proposal to Defer Adjudication of Certain Water Right Claims* ("Opposition"). The United States opposes the State's *Petition* on the basis the optional deferral process removes the BRBA from the purview of the McCarran Amendment. A reply to the United States' *Opposition* was filed by the State. A hearing on the *Petition* was held before the Court on May 24, 2021. Aside from the United States, no other water users oppose the *Petition*.

II. ANALYSIS

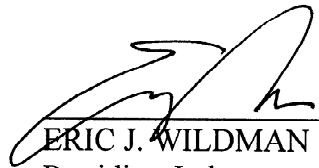
The issue before the Court is whether the optional deferral process removes the BRBA from the purview of the McCarran Amendment. The Court addressed this same issue with respect to the Clark Fork-Pend Oreille River Basins Adjudication in its *Memorandum Decision on Optional Deferral Process* issued contemporaneously herewith in Twin Falls County Case No. 69576, *In Re: The General Adjudication of Rights to the Use of Water From the Clark Fork-Pend Oreille River Basins Water System* ("Memorandum Decision"). The analysis set forth in this Court's *Memorandum Decision* is incorporated herein by reference and will not be repeated.

III. CONCLUSION

Based on the foregoing, the Court concludes it is possible to defer the adjudication of *de minimis* rights in the BRBA within the terms of the McCarran Amendment through the optional deferral process proposed by the State. The Court concludes the BRBA complies with the terms of the McCarran Amendment. The Court concludes the BRBA is authorized to be commenced under the plain language of Idaho Code § Idaho Code § 42-1406C(1). The Court concludes the BRBA is a comprehensive general stream adjudication proceeding through which this Court may exercise jurisdiction over the United States under the McCarran Amendment.

³ The Court was also informed that the United States was meeting with the State of Idaho and other parties to discuss and attempt to negotiate a resolution surrounding the deferral of *de minimis* domestic and stock water rights in the CFPRBA.

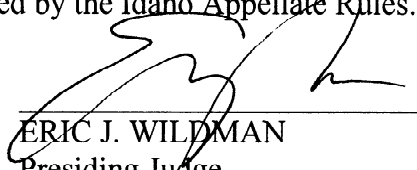
DATED: June 14, 2021


ERIC J. WILDMAN
Presiding Judge
Bear River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED: June 14, 2021


ERIC J. WILDMAN
Presiding Judge
Bear River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION ON OPTIONAL DEFERRAL PROCESS was mailed on June 15, 2021, with sufficient first-class postage to the following:

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