

(“*Notice of Filing*”). The Department served a copy of the *Petition* and *Notice of Filing* on the State, the United States, the Department, and Indian tribes either residing or possibly having interests within the boundaries of the Clark Fork-Pend Oreille River Basins water system.

2. The Department published the *Notice of Filing* for three consecutive weeks in newspapers of general circulation, including the Coeur d’Alene Press, Bonner County Daily Bee and Bonners Ferry Herald.

3. The Department filed an *Affidavit of Service* on December 28, 2020, and an *Amended Affidavit of Service* on January 7, 2021.

4. The Court held the commencement hearing on May 24, 2021. The United States appeared in opposition to the State’s *Petition*.

5. This Court issued a *Memorandum Decision on Petition to Commence Clark Fork-Pend Oreille River Basins General Adjudication* and a *Memorandum Decision on Optional Deferral Process* concurrently with this *Order*.

III.

CONCLUSIONS OF LAW

Based upon the findings of fact in this matter, the Court makes the following conclusions of law:

1. The *Notice of Filing* complied with the requirements of Idaho Code § 42-1407.
2. The Director complied with Idaho Code § 42-1407 in service and in publication of the *Notice of Filing*.
3. The deferral procedure for the adjudication of domestic and stock water rights as defined by Idaho Code §§ 42-1401A(4) and (11) as set forth in the *Notice of Filing* complies with the terms of the McCarran Amendment, 43 U.S.C. § 666.

IV.

ORDER

Therefore, based on the findings of fact and conclusions of law and on the record in this matter, THE FOLLOWING ARE HEREBY ORDERED:

1. Pursuant to Idaho Rule of Civil Procedure 52(a) the *Memorandum Decision on Petition to Commence Clark Fork-Pend Oreille River Basins General Adjudication* and

Memorandum Decision on Optional Deferral Process issued concurrently herewith are adopted as further findings of fact and conclusions of law.

2. The Clark Fork-Pend Oreille River Basins Adjudication is commenced as authorized by Idaho Code § 42-1406B as 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.

3. The boundaries of the Clark Fork-Pend Oreille River Basins water system to be adjudicated are 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 $\frac{1}{4}$ of 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 order shared by Idaho and Montana to the point where the border 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 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 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 (SE $\frac{1}{4}$ NW $\frac{1}{4}$) 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, [Bonner]¹ and Kootenai Counties in Idaho.

A map showing the boundaries of the water system is set forth in Exhibit 1, which is attached hereto and incorporated herein by reference. All waters in the state of Idaho within the boundaries set forth above are included in this adjudication.

4. Counties partly located within the boundaries of the water system include the following: Boundary, Bonner and Kootenai Counties.

5. All classes of water users and all hydrologic sub-basins within the system described in paragraph 3 above shall be adjudicated as part of the Clark Fork-Pend Oreille River Basins Adjudication.

6. No uses of water are excluded from the adjudication. However, it is possible to defer the adjudication of *de minimis* domestic and stock water rights as defined by Idaho Code §§ 42-1401(4) and (11) as set forth in the *Notice of Filing*, within the terms of the McCarran Amendment. The procedures for adjudicating *de minimis* domestic and stock water claims shall be as set forth in the *Order Establishing Procedures for the Adjudication of De Minimis Domestic and Stock Water Claims* issued in the above-captioned matter, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.

7. All claimants asserting rights to the use of surface and ground waters under state law from the above-described water system, including pursuant to state license, historic use, federal or state court decree and holders of permits for which proof of beneficial use was filed on or prior to the date of entry of this *Order*, shall 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. All claimants asserting rights to the use of surface and ground waters under federal law from the

¹ The legal description contained in the *Petition* incorrectly states "Boundary, Benewah and Kootenai Counties in Idaho."

above-described water system shall file a notice of claim as required by the *Notice of Order Commencing a General Adjudication* prepared by the Director or as otherwise ordered by the Court, unless the claimants elect to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A.

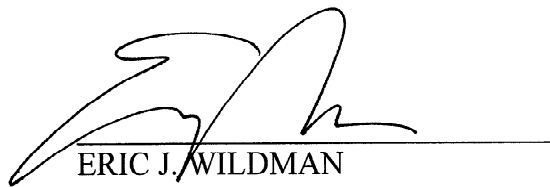
8. The Director is authorized to prepare the *Notice of Order Commencing a General Adjudication* in accordance with Idaho Code § 42-1408(1). The Director shall serve the *Notice of Order* as provided in Idaho Code § 42-1408(2) and send a *Notice of Order* by ordinary mail to all persons who submit a written request to the Director as required by Idaho Code § 42-1408(3). The Court approves the Director's proposed method for conducting second round service as required by Idaho Code § 42-1408(4).

9. The Director shall commence an investigation of all uses of water from the system in accordance with Idaho Code § 42-1410 and file a report in accordance with Idaho Code § 42-1411.

10. The Director shall file with the Court affidavits of service and other documents stating the persons served with a copy of the *Notice of Order*. The affidavits shall contain the address used for service for each person served.

11. The Clerk of the District Court shall send a certified copy of this *Order* to the Director, and shall send a conformed copy to all persons appearing before the Court at the commencement hearing in accordance with the Idaho Rules of Civil Procedure.

DATED: June 14, 2021.



ERIC J. WILDMAN
Presiding Judge
Clark Fork-Pend Oreille River Basins 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.

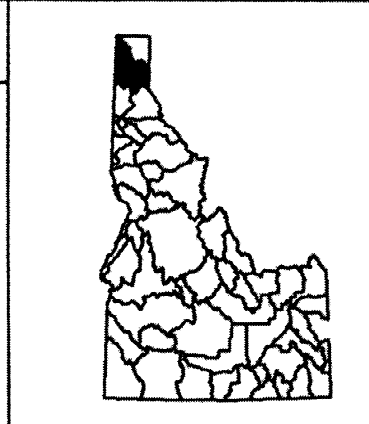
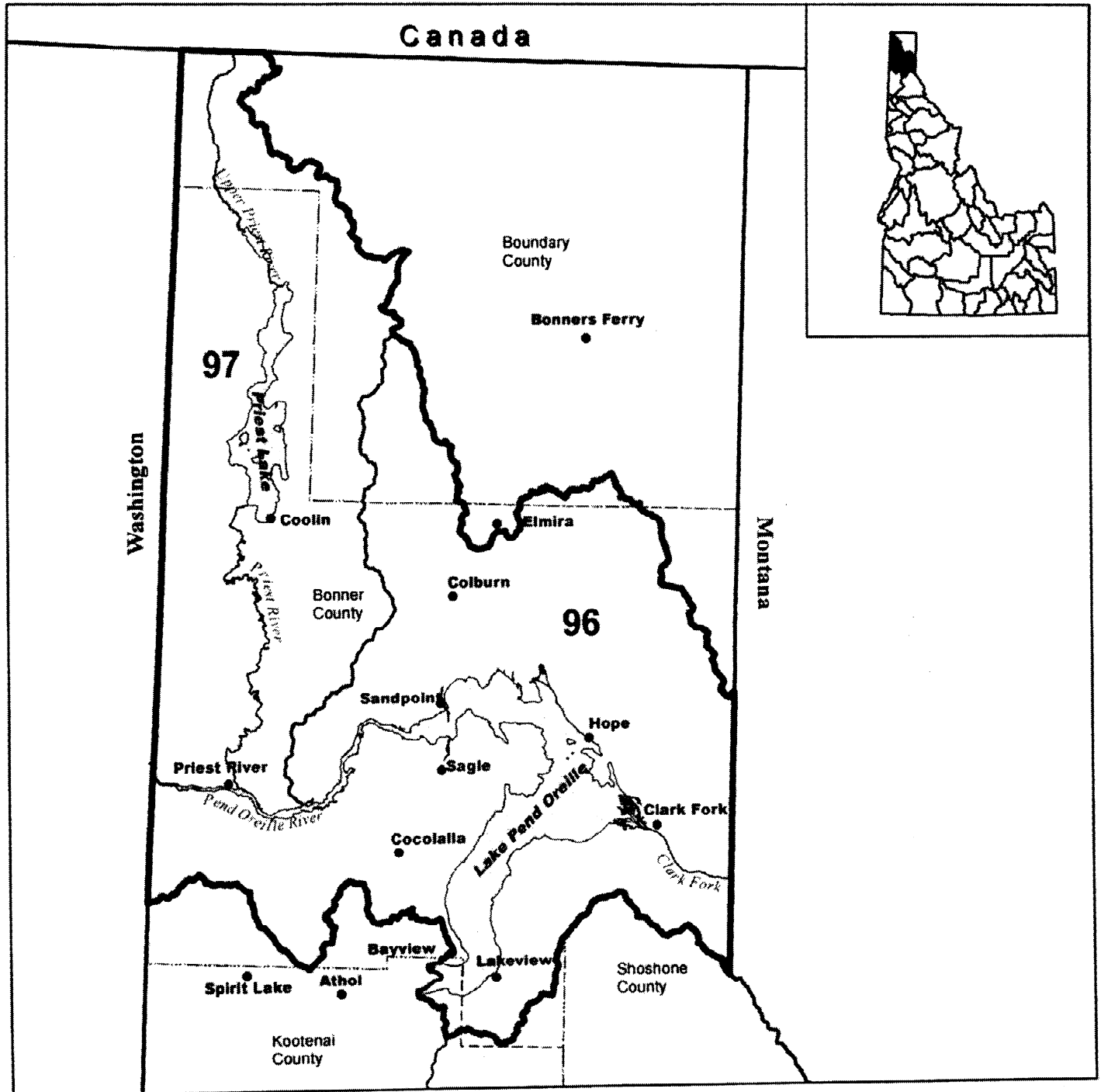


ERIC J. WILDMAN

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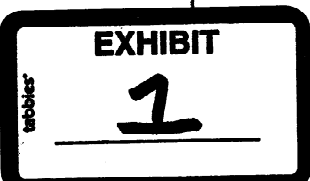
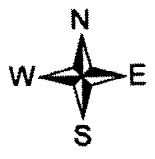
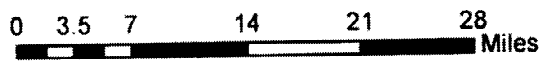
Clark Fork-Pend Oreille River Basins Adjudication

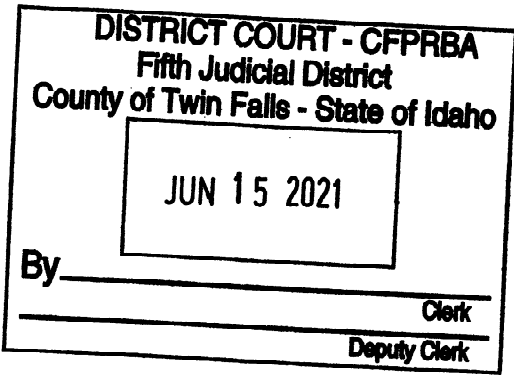
Clark Fork-Pend Oreille River Basin Water System



Legend

- County Boundaries
- cities
- Clark Fork- Pend Oreille River Basin Water System Boundary
- IDWR Administrative Basins





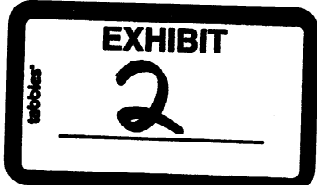
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER FROM THE CLARK FORK-PEND OREILLE RIVER BASINS WATER SYSTEM) Case No.: 69576) ORDER ESTABLISHING PROCEDURES FOR THE ADJUDICATION OF DE MINIMIS DOMESTIC AND STOCKWATER CLAIMS)))))

Pursuant to the Memorandum Decision on Petition to Commence Clark Fork-Pend Oreille River Basins Adjudication, the Memorandum Decision on Optional Deferral Process and the Commencement Order for the Clark Fork-Pend Oreille River Basins Adjudication entered in the above-captioned matter; the following procedures are ordered for Case No. 69576, In Re: The General Adjudication of the Rights to the use of Water from the Clark Fork-Pend Oreille River Basins Water System ("CFPRBA"):

DEFERRAL PROCEDURE FOR DE MINIMIS DOMESTIC AND STOCKWATER CLAIMS

All claimants of de minimis (small) domestic and/or stock (D&S) water rights as defined in Idaho Code § 42-1401A(4) and (11) shall be joined as parties in this proceeding and shall be bound by all decrees entered in this case, including the final decree. Any objection to any and all claims being adjudicated in this proceeding, including those of a D&S claimant, must be timely raised in accordance with Idaho Code § 42-1412 or be forever barred.



Water users of D&S rights may elect to file a Notice of Claim at the time of commencement of the Clark Fork-Pend Oreille River Basins Adjudication or defer (postpone) the filing. If a D&S claimant elects to have the claim adjudicated now, then the D&S claimant must file a notice of claim (Idaho Code § 42-1409) and pay any fees (Idaho Code § 42-1414). Election to defer will not result in a loss of the D&S water right nor will a D&S claimant be prevented from making a D&S claim in the future. The owner of a D&S water right who elects to defer the filing of a Notice of Claim will be required to have the water right adjudicated prior to the water right being distributed by a watermaster (Idaho Code § 42-607) and/or before an application for change of the water right may be filed with IDWR (Idaho Code § 42-222).

Water right holders who choose to delay filing on D&S water rights will be required to file a motion for determination of the use (motion), with an attached notice of claim, in order to obtain an adjudicated water right. Notice of the motion and information describing the claim must be published by the claimant for at least three (3) weeks in a newspaper of general circulation in the county where the point of diversion is located. In addition, claimant must serve the motion and claim on the Director, the State of Idaho, the United States, and persons against whom relief is sought. Service upon the United States must be via certified mail to the United States Attorney for the District of Idaho and the United State Attorney General in Washington, D.C.

Any party can object to the claim by filing written notice of the objection with the district court within forty-five (45) days from the date of the first publication of the notice. A copy of the objection shall be served on the State of Idaho, Director, United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.

Within thirty (30) days of the objection deadline, the Director will file a notice with the Court stating whether the Director will examine the deferred D&S claim and whether the Director will prepare a report on the claim to the district court. The Director's notice will contain the Director's estimated costs, due from the claimant, for examination of the claim and preparation of the report. The notice will also contain the Director's approximation of time for filing the report. Prior to filing the report, the D&S claimant shall pay the balance of the Director's costs or be refunded by the Director any unused advanced estimated costs. If the D&S claimant contests the Director's costs, the district court shall determine a reasonable cost to be paid by the claimant. Deferrable domestic claimants are also required to pay their own filing fees. The Director will investigate the claim and submit the report to the Court with copies to the State of Idaho, United States, all parties who filed objections, and all parties against whom relief is sought. The court will then set objection and response deadlines and set a hearing (Idaho Code § 42-1412).

If the Director notifies the Court that the Director does not intend to prepare a report, then the District Court will proceed with a hearing and any party who timely objected may appear and challenge the D&S motion and claim. The district court may order the Director to prepare a report after a hearing on the motion and D&S claim.

Proof of service is required for any motion under this deferred procedure. Claimant must certify the date and manner of service of the motion on the State of Idaho, Director, United States, and persons against whom relief is sought.

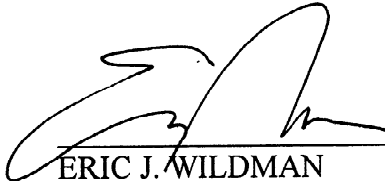
Appeals of any orders or decrees entered under the deferred procedure are governed by the rules applicable to appeals of orders in the Clark Fork-Pend Oreille River Basins Adjudication.

The district court retains continuing jurisdiction of the subject matter in this proceeding and the parties to the proceeding for the purpose of adjudicating deferred D&S claims.

The proposed process above meets the requirements of the McCarran Amendment, 43 U.S.C. § 666, because all water users, including those claiming *de minimis* D&S rights, will be served and made parties to this adjudication, and will eventually have their rights adjudicated, either in this phase of the proceeding or pursuant to the proposed procedures set forth in this notice.

IT IS SO ORDERED

DATED: June 14, 2021.



ERIC J. WILDMAN

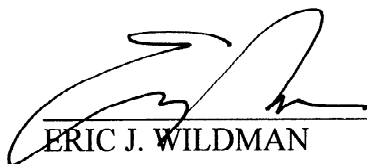
Presiding Judge

Clark Fork-Pend Oreille River Basins 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

Clark Fork-Pend Oreille River Basins Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the COMMENCEMENT ORDER FOR THE CLARK FORK-PEND OREILLE RIVER BASINS ADJUDICATION was mailed on June 15, 2021, with sufficient first-class postage to the following:

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 83720
BOISE, ID 83720-0010
Phone: 208-334-2400

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

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I certify that a true and correct copy of the COMMENCEMENT ORDER FOR THE CLARK FORK-PEND OREILLE RIVER BASINS ADJUDICATION was mailed on June 15, 2021, with sufficient first-class postage to the following:

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