

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

DEC 18 2013

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 SRBA

Case No. 39576

)
)
) **ORDER GRANTING STATE OF**
) **IDAHO'S MOTION FOR INTERIM**
) **ORDER IMPLEMENTING THE ORDER**
) **GOVERNING PROCEDURES OF**
) **ADJUDICATION OF DEFERRED *DE***
) ***MINIMIS* DOMESTIC AND STOCK**
) **WATER CLAIMS**
)
)
)
)

On June 28, 2012, this Court entered an *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims* in Snake River Basin Adjudication ("SRBA") main case no. 39576 ("June 28, 2012 Order"). A copy of the June 28, 2012 Order is attached hereto as **Exhibit A**. The June 28, 2012 Order establishes, among other things, the procedures for the adjudication of deferrable *de minimis* domestic and stockwater claims in the SRBA by this District Court after entry of the SRBA *Final Unified Decree*. On November 29, 2013, the State of Idaho filed a *Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred De Minimis Domestic and Stock Water Claims* ("Motion"). The Motion requests that the procedures for the adjudication of deferred *de minimis* claims set forth in this Court's June 28, 2012 Order be implemented at this time, on an interim basis, until entry of the *Final Unified Decree*. A hearing on the Motion was held before this Court on December 17, 2013. No one appeared in opposition to the Motion. Following a review of the file and after hearing the comments made in open court, the Court, for the reasons stated on the record, granted the Motion.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

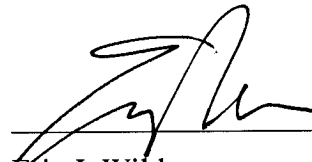
1. The State of Idaho's *Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred De Minimis Domestic and Stock Water Claims* is hereby granted.

2. The procedures for the adjudication of deferred *de minimis* claims in the SRBA set forth in this Court's *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, entered on June 28, 2012, are hereby implemented effective immediately.

3. As of the date of this *Order*, all Motions for Determination of Deferred *De Minimis* Domestic or Stock Water Use shall be filed utilizing the standardized form attached hereto as **Exhibit B.**¹

IT IS SO ORDERED.

Dated December 18, 2013


Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

¹ Forms may be obtained from the SRBA Court (www.srba.idaho.gov).

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

JUN 28 2012

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

<p>In Re SRBA</p> <p>Case No. 39576</p> <hr style="border: 0.5px solid black;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ORDER GOVERNING PROCEDURES IN THE SRBA FOR ADJUDICATION OF DEFERRED <i>DE MINIMIS</i> DOMESTIC AND STOCK WATER CLAIMS</p>
--	---	--

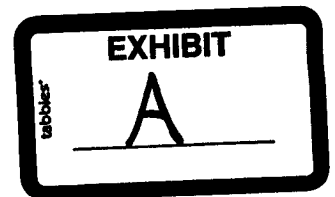
This order establishes the procedure in the SRBA for adjudication of *de minimis* domestic and stock water right claims that were required to be claimed in the SRBA but the adjudication of which were allowed to be deferred in accordance this Court's *Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses* dated January 17, 1989 and SRBA *Administrative Order No. 10* dated March 22, 1995:

FINDINGS OF FACT

1. The United States and State of Idaho executed and filed a "Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stock Water Claims" on December 20, 1988. This stipulation proposed an alternative, elective procedure for the adjudication of *de minimis* domestic and stock water claims.

2. This Court entered its *Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses* dated January 17, 1989. The 1989 order established a procedure for the deferral of the adjudication of *de minimis* domestic and stock water as defined in Idaho Code § 42-1401A (5) and (12) (Supp. 1988).

ORDER GOVERNING PROCEDURES IN THE SRBA FOR ADJUDICATION OF DEFERRED *DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS - 1



3. This Court entered SRBA *Administrative Order No. 10* on March 22, 1995, which superseded this Court's *Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses* dated January 17, 1989. SRBA *Administrative Order No. 10* incorporated the definition of domestic and stock water uses from the 1990 edition of the Idaho Code. The definition of domestic use contained in the 1990 Idaho Code differed from the definition of domestic use in the 1988 Supplement to the Idaho Code.
4. This Court finds that it is necessary to enter a unified order setting forth both the description of those *de minimis* "domestic use" and "live stock use" claims that were not required to be immediately adjudicated in the SRBA, the conditions applicable to such deferral, and the procedure for adjudication of such claims after entry of the SRBA *Final Unified Decree*.

THEREFORE, IT HEREBY ORDERED that the following procedures are adopted for Case No. 39576:

- A. **DEFINITION OF *DE MINIMIS* DOMESTIC AND STOCK WATER USES AND CONDITIONS APPLICABLE TO THE ADJUDICATION OF DEFERRED *DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS IN THE SRBA.**
 1. "Domestic uses" for purposes of this order means (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 (1/2) 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. Domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and

volume limitations set forth in subsection (b) above.

2. "Stock water" for purposes of this order means: 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.
3. Claimants of deferred *de minimis* domestic or stock water rights may not claim an amount in excess of the quantities set forth in the definition of domestic and stock water uses above.
4. Claimants of deferred *de minimis* domestic and stock water rights are bound by all partial decrees and general provisions entered in this case and the *Final Unified Decree*.
5. A claimant of a deferred *de minimis* domestic or stock water right must have the claimed right adjudicated prior to seeking authorization from the Director to change the point of diversion, place of use, purpose of use, or period of use of the claimed right.
6. There shall be no presumption that either the diversion requirement or the actual consumptive use for a deferred *de minimis* domestic or stock water right is equal to 13,000 gallons per day or any other quantity greater than actual historic use.
7. 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 in this proceeding in order to have the right distributed.

B. PROCEDURE FOR ADJUDICATION OF DEFERRED *DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS.

The following provisions apply to the adjudication of a deferred *de minimis* domestic or stock water claim:

1. The claimant of a deferred *de minimis* domestic or stock water use shall file with this district court a motion for determination of the claim with an attached notice of claim on

a form provided by the Director and shall serve the State of Idaho, the Director, and the United States. 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 this 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 (2003). 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. The 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 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

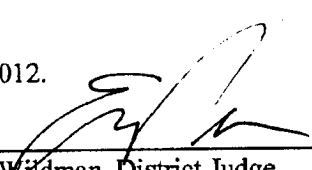
the claimant contests the Director's costs, the district court shall determine a reasonable cost to be paid by the claimant.

4. 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 (2003).
5. 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.
6. A claimant 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.
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, and the United States.
8. The claimant shall have the burdens of proof and of persuasion in establishing each and every element of the claim.
9. Appeals of any orders or decrees entered under this summary procedure shall be governed by the Idaho Rules of Civil Procedure and any applicable administrative orders of this court.

10. 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 claimant may adjudicate a deferred *de minimis* domestic or stock water claim under this procedure.

Nothing in this order is intended to preclude a claimant from establishing the requisite elements of a *de minimis* domestic or stock water claim.

DATED this 28th day of ~~January~~ ^{June}, 2012.


/s/ _____
Eric Wildman, District Judge

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER GOVERNING PROCEDURES IN THE SRBA FOR ADJUDICATION OF DEFERRED *DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS** were mailed on June 28, 2012 by first-class mail to the following:

DIRECTOR OF IDWR
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

U.S. Department of Justice
Environment & Natural Resources Division
550 W Fort St, MSC 033
Boise, ID 83724



Julie Murphy
Deputy Clerk

INSTRUCTIONS FOR FILING MOTION FOR DETERMINATION OF DEFERRED *DE MINIMIS* DOMESTIC AND/OR STOCK WATER USE

The attached form is used to file a Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use in the Snake River Basin Adjudication (“SRBA”). Forms may be obtained from the SRBA Court (www.srba.idaho.gov).

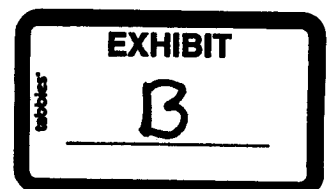
The water right number for your deferred *de minimis* domestic and stock water use, which should be obtained from the Idaho Department of Water Resources, must be indicated in the blank space following “Subcase” in the form’s caption. You must use a **separate form for each** deferred *de minimis* domestic and stock water use.

Your Motion must be accompanied by a fully completed Notice of Claim form, available from the Idaho Department of Water Resources.

The procedures governing the filing and prosecution of a Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use are set forth in this Court’s *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, entered in SRBA Case No. 39576 on June 28, 2012.

Objections to a Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use should be filed using a Standard Form 1 Objection. Forms may be obtained from the SRBA Court (www.srba.idaho.gov).

By filing a Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.



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

In Re SRBA

Case No. 39576

Subcase _____
(Insert water right number)

**MOTION FOR DETERMINATION OF
DEFERRED *DE MINIMIS* DOMESTIC OR
STOCK WATER USE**

Please fill in the following information:

NAME AND ADDRESS OF WATER RIGHT CLAIMANT.

Name: _____

Address: _____

Daytime Phone: _____

Name & Address of Attorney, if any:

I HAVE ATTACHED:

- A fully completed Notice of Claim (available from IDWR).
- A claim filing fee for a domestic and stock water use pursuant to I.C. § 42-1414. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 25.00.

I HAVE READ AND REVIEWED THE FOLLOWING:

- The procedures governing the filing and prosecution of this Motion as set forth in the Court's *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, entered in SRBA Case No. 39576 on June 28, 2012.

- The *Order Granting State of Idaho's Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, entered in SRBA Case No. 39576 on December 18, 2013.

INSTRUCTIONS REGARDING THE HEARING ON THIS MOTION: A hearing on your Motion will be scheduled by the Court after you file an *Affidavit of Publication* in the above-captioned matter evidencing that you have caused to be published a notice of the pendency and purpose of your 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 this Court in accordance with paragraph B.1. of the *Order Governing Procedures I the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*.

Signed: _____

Dated: _____

CERTIFICATE FO MAILING

I certify that on _____, 20__, I mailed original and copies of this form, including all attachments, via certified mail and addressed as follows to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Ave. North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div.
550 W Fort Street, MSC 033
Boise, ID 83724

U.S. Attorney's Office
800 Park Blvd., Ste. 600
Boise, ID 83712

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Signature of person or attorney mailing the form

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER GRANTING STATE OF IDAHO'S MOTION FOR INTERIM ORDER IMPLEMENTING THE ORDER GOVERNING PROCEDURES OF ADJUDICATION OF DEFERRED *DE MINIMIS* DOMESTIC AND STOCK WATER CLAIMS** were mailed on December 18, 2013, by first-class mail to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-44449

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


Deputy Clerk