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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
JUL 11 2008
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 THE RIGHTS TO THE USE OF WATER FROM THE COEUR D'ALENE-SPOKANE RIVER BASIN WATER SYSTEM	)	**Case No: 49576** **ORDER SETTING COMMENCEMENT HEARING AND PROCEDURES FOR HEARING**

I.

BRIEF PROCEDURAL BACKGROUND

Idaho Code § 42-1406B(1) (Supp. 2008) authorizes the filing of a petition to commence a general water right adjudication within the terms of the McCarran Amendment, 43 U.S.C. § 666, for the determination of the water rights from surface and ground water sources of the Coeur d'Alene-Spokane river basin water system.

Idaho Code § 42-1406B(2) (Supp. 2008) provides that the petition may be filed in any district court in which any part of the water source is located or before a court of special jurisdiction for water right adjudications. The statute also provides that unless otherwise ordered by the Supreme Court, special jurisdiction for the water rights adjudication resides in the Snake River Basin Adjudication District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

On September 29, 2007, the Idaho Supreme Court issued a *Provisional Order Re: Appointment of District Judge, Confirmation of Special Jurisdiction and Determination of Venue for the General Adjudications of the Coeur d'Alene-Spokane River Basin, the Palouse River Basin and the Clark Fork-Pend Oreille River Basins,* 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 this general adjudication proceeding.

On July 8, 2008, the State of Idaho (Petitioner), filed a petition pursuant to Idaho Code § 42-1406B(1), for the commencement of a general adjudication *inter se* of all rights arising under state or federal law to the use of surface and ground water for the Coeur d'Alene-Spokane River basin water system and for the administration of such rights (*Petition*). A *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 deferring the adjudication of *de minimis* domestic and stock water rights as defined by I.C. § 42-1401A (4) and (11) was filed concurrently with the *Petition*.

The *Petition* provides that the commencement of the general adjudication is made conditional on a determination by the district court that it is possible to defer the adjudication of *de minimis* domestic and stock water rights as set forth in a *Stipulation* and comply with the terms of the McCarran Amendment.

II.

NOTICE OF HEARING

IT IS HEREBY ORDERED that the commencement hearing on the *Petition* (Commencement Hearing) shall be held on **Thursday, August 28, 2008, at 10:00 a.m. (PDT) at the Federal Courthouse, 205 North 4th Street, Coeur d'Alene, Idaho.**

III.

ORDER ON COMMENCEMENT HEARING NOTICE AND PROCEDURES

IT IS FURTHER HEREBY ORDERED as follows:

1. The Petitioner is directed to prepare, in plain and concise language, and publish a notice of filing of a petition for entry of an order commencing a general adjudication (*Notice of Filing Petition*) for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system proposed to be adjudicated is located. If there is no newspaper published within a particular county, then notice shall be published in a newspaper having general

circulation in that county. The Petitioner shall also serve the *Notice of Filing Petition* on the United States, the Director of the Idaho Department of Water Resources, and on any Indian tribe residing in the boundaries or having interests in any portion of the water system, and file affidavits of service of the *Notice of Filing Petition* with the district court upon completion of service.

2. The *Notice of Filing Petition* shall contain the following:

a. A description of the boundaries of the water system proposed for the general adjudication.

b. A statement of the date, place and time of hearing on *Petition.*

c. A concise statement of the matters raised by the *Petition* and proposed to be considered by the district court, including:

(1) Whether the boundaries of the water system as proposed by the *Petition* are in compliance with the terms of the McCarran Amendment;

(2) Whether the proposed deferral procedure for the adjudication of *de minimis* domestic and stock water rights as defined by I.C. § 42-1401A (4) and (11) and as set forth in the *Stipulation* is in compliance with the terms of the McCarran Amendment;

(3) Whether the United States, acting in a trust capacity on behalf of any interested Indian tribes, has the capacity to bind said tribes to the *Stipulation* for purposes of compliance with the terms of the McCarran Amendment, where any said tribes are not signatories to the *Stipulation.*

(4) Any other uses of water excluded from the adjudication proceedings;

(5) Any other matter raised by the *Petition.*

d. A statement that the district court will hear evidence and legal argument from any person in response to any matter raised by the *Petition.*

3. Each attorney who represents any interested party in the general adjudication or interested party proceeding *pro se* who intends to present evidence or

legal argument at the Commencement Hearing shall file a *Notice of Appearance* with the district court on or before 5:00 p.m. (Mountain Time), August 14, 2008.

4. Each attorney or *pro se* litigant who intends to present evidence shall also file with the district court on or before 5:00 p.m. (Mountain Time), August 14, 2008, a pre-hearing statement that includes all of the following:

a. A statement of issues raised;

b. A list of documents to be offered into evidence at the hearing;

c. A list of witnesses; and

d. The estimated amount of time needed for direct examination of each witness.

5. Each attorney or *pro se* litigant who intends to present legal argument shall also lodge with the district court a brief or memorandum of law in support of that attorney's or *pro se* litigant's legal argument on or before 5:00 p.m. (Mountain Time), August 14, 2008.

6. Each attorney or *pro se* litigant shall serve the State of Idaho, Office of the Attorney General, the Director of the Idaho Department of Water Resources and the United States with any papers filed or lodged with the district court on or before 5:00 p.m. (Mountain Time), August 14, 2008. The addresses for service are as follows:

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

b. Director, Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

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

7. All filings and lodgings with the district court shall be made with the clerk of the district court under the above-captioned case number and title. The address for filing and lodging is as follows:

Coeur d'Alene-Spokane River Basin Adjudication
c/o SRBA District Court
PO Box 2707
Twin Falls, ID 83303

Fax filing is also available pursuant to I.R.C.P. 5(e)(2), provided however that documents are limited to ten (10) pages, including attachments and exhibits. Documents can be filed at (208) 736-2121.

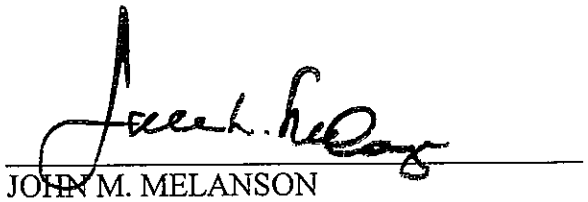
8. The district court may relieve any attorney or *pro se* litigant from the requirements of this *Order* for good cause shown.

IT IS FURTHER HEREBY ORDERED that the Petitioner is directed to include the provisions of this *Order* in the *Notice of Filing Petition.*

IT IS FURTHER HEREBY ORDERED that the Petitioner is directed to provide service to any Indian tribes who reside within the boundaries or have interests in any portion of the Coeur d'Alene-Spokane river basin water system a copy of the *Petition*, *Stipulation* and *Notice of Filing Petition*, and all of the briefs, memoranda and statements filed by the Petitioner for the Commencement Hearing.

IT IS SO ORDERED.

DATED: July 11, 2008.



JOHN M. MELANSON
Presiding Judge

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER SETTING COMMENCEMENT HEARING AND PROCEDURES FOR HEARING** were mailed on July 11, 2008, by first-class mail to the following:

Director, Idaho Department of Water Resources
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

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

Julie Murphy
Deputy Clerk