

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

In Re SRBA

Case No. 39576

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

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).

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 This Court entered SRBA *Administrative Order No. 10* on March 22, 1995, which superseded this Court's *Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses* dated January 17,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

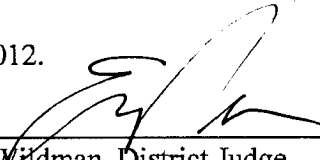
the claimant contests the Director's costs, the district court shall determine a reasonable cost to be paid by the claimant.

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

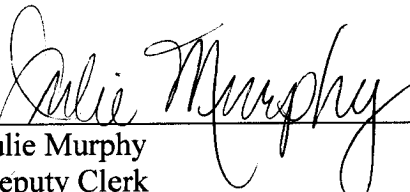
CERTIFICATE OF MAILING

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:

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Julie Murphy
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