

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) Case No: 79576
ADJUDICATION OF RIGHTS)
TO THE USE OF WATER) COMMENCEMENT ORDER FOR THE
FROM THE BEAR RIVER) BEAR RIVER BASIN ADJUDICATION
BASIN WATER SYSTEM)
_____)

I. BACKGROUND

On November 20, 2020, the State of Idaho filed a Petition seeking commencement of a general adjudication inter se of all rights arising under state or federal law to the use of surface and ground waters from the Bear River basin water system and for the administration of such rights ("Petition"). The Petition is filed pursuant to Idaho Code § 42-1406C(1). The commencement hearing on the Petition was held before the Court on May 24, 2021. The Court having issued a Memorandum Decision on Petition to Commence Bear River Basin General Adjudication and Memorandum Decision on Optional Deferral Process concurrently herewith makes the findings of fact and conclusions of law set forth herein.

II. FINDINGS OF FACT

1. On behalf of the Director of the Idaho Department of Water Resources ("Department"), the Department prepared a notice of filing of a petition for the general adjudication that contained the information and enclosures required by Idaho Code § 42-1407(3) ("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 Bear River Basin water system.

2. The Department published the *Notice of Filing* for three consecutive weeks in newspapers of general circulation, including Idaho State Journal, News Examiner, Caribou County Sun, Preston Citizen, and Idaho Enterprise.

3. The Department filed an *Affidavit of Service* on March 3, 2020.

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 Bear River Basin 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 Bear River Basin 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 Bear River Basin Adjudication is commenced as authorized by Idaho Code § 42-1406C 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 Bear River basin water system within the State of Idaho.

3. The boundaries of the Bear River basin water system to be adjudicated are as follows:

Beginning at the southeast corner of the state of Idaho at a point marking the southeast corner of Bear Lake County located at the southeast corner of Government Lot 3, Section 26, Township 16 South, Range 46 East, B.M.; thence continuing west along the southern boundary of the state of Idaho to a point in Cassia county located at the southwest corner of Government Lot 7 (SE $\frac{1}{4}$ SE $\frac{1}{4}$), Section 28, Township 16 South, Range 28 East, B.M.;

Thence continuing northeasterly along the ridge lines and mountain peaks of the Black Pine and Deep Creek Mountains to a point on Deep Creek Peak in Power county located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 13, Township 11 South, Range 32 East, B.M.;

Thence continuing southeasterly then turning northerly following the ridge lines and mountain peaks that mark the southern edges of the boundary of the Bannock Creek drainage to a point on Bradley Mountain in Power County locate in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, Township 10 South, Range 34 East, B.M.;

Thence continuing southeasterly along the ridge lines and mountain peaks separating the Dairy Creek Drainage to the southwest and the Hawkins Creek drainage to the northeast to a point on the boundary line separating Bannock and Oneida counties in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 22, Township 11 South, Range 35 East, B.M.;

Thence continuing southeasterly along the boundary separating Bannock and Oneida counties, diverting southerly from the county boundary briefly for about 3.5 miles in Township 12 South, Range 36 East, before rejoining and continuing to follow the county boundary to a point where Bannock, Franklin, and Oneida county boundaries intersect in the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 22, Township 13, South, Range 37 East, B.M.;

Thence continuing southerly for about two miles until reaching Oxford Peak and turning northeasterly following the ridge lines and mountain peaks of the Portneuf Range crossing into Caribou County to a peak on Buckskin Mountain in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 22, Township 09 South, Range 39 East, B.M.;

Thence continuing east and then northerly moving along the ridge lines and mountain peaks to a point in Caribou County located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 33, Township 06 South, Range 41 East, B.M.;

Thence continuing southeasterly along the ridge lines and mountain peaks of the Aspen Range to a point on the boundary line separating Caribou and Bear Lake counties located on the boundary between the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 9 South, Range 43 East B.M. and Government Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 31, Township 9 South, Range 44 East B.M.;

Thence continuing southeasterly along the county line to a point on the eastern boundary of the state of Idaho in Government Lot 1 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 35, Township 10 South, Range 46 East, B.M.; thence south along the eastern boundary of the state of Idaho to a 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 water of Beaver Creek, Christy Creek, Deep Creek, Cub River, Logan River, Malad River, Spring Creek, and Worm Creek drainages before such waters reach Utah; the Erwine Creek, Garrett Creek, Giraffe Creek, North Willow Creek, Poison Creek, Potato Creek, and Robinson Creek Drainages before such waters reach Wyoming; the Raymond and Salt Creek drainages after such waters cross into Idaho from Wyoming. All of these drainages are ultimately tributaries of the Bear River in Utah, except for the Deep Creek Drainage which is tributary to the Great Salt Lake, and contain portions of Bannock, Bear Lake, Caribou, Cassia, Franklin, Oneida and Power 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: Bannock, Caribou, Cassia, Franklin, Oneida and Power 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 Bear River Basin 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 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.

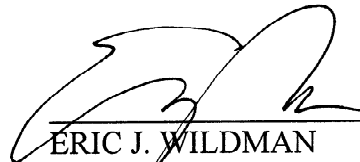
DATED: June 14, 2021.


ERIC J. WILDMAN
Presiding Judge
Bear River Basin Adjudication




RULE 54(b) CERTIFICATE

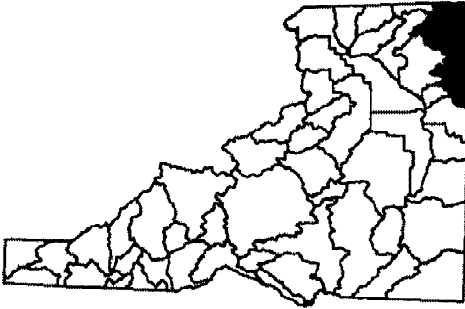
With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment 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

Bear River Basin Water System

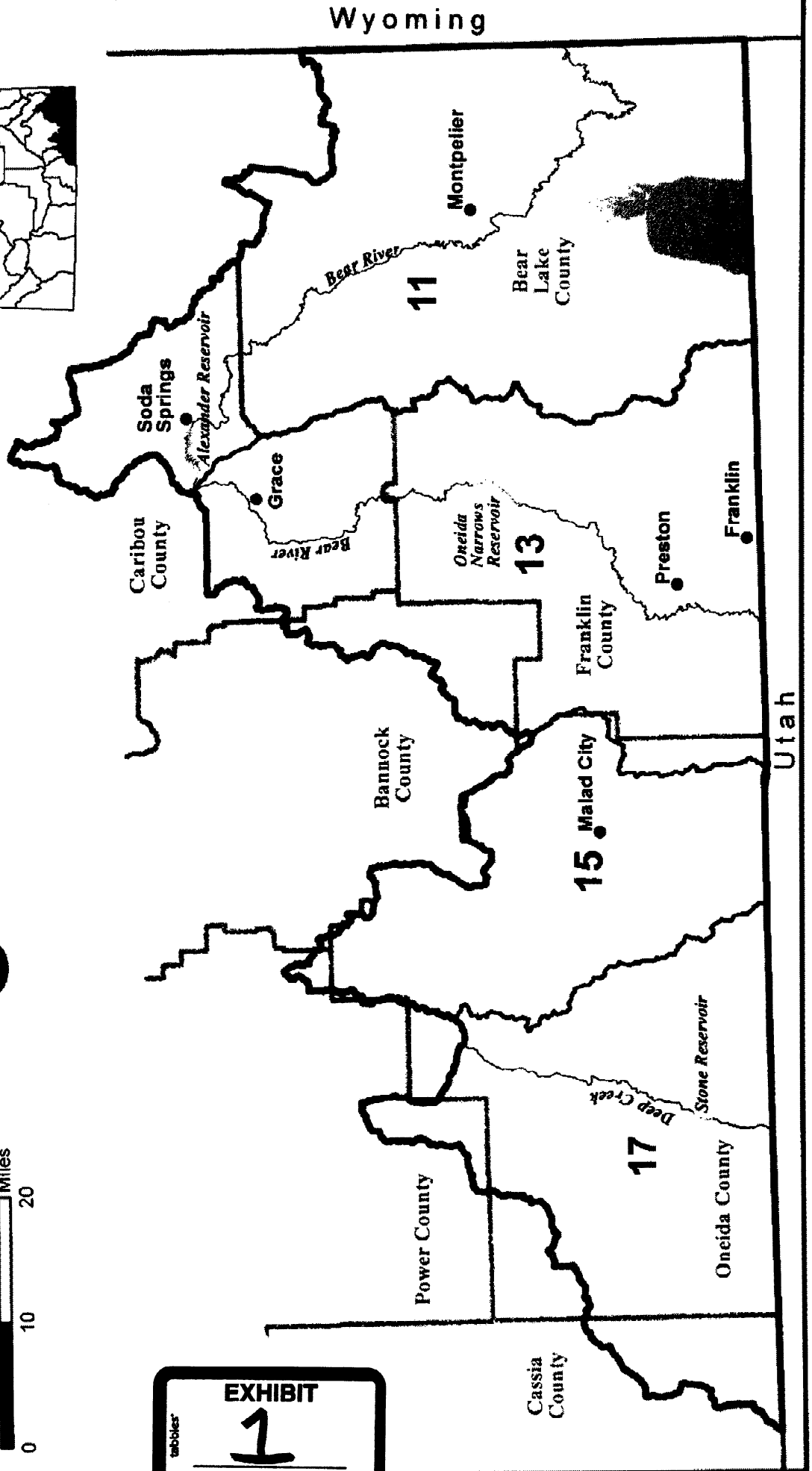
- Cities
-  IDWR Administrative Basins
-  Bear River Basin Water System Boundary
-  Counties

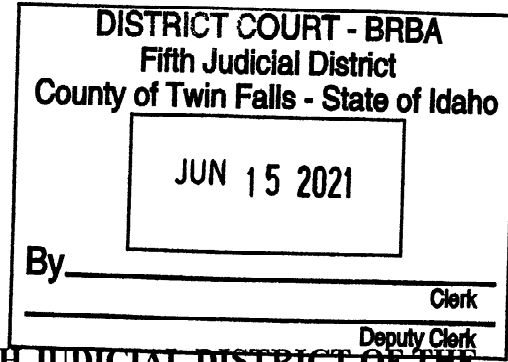


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EXHIBIT

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**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)) ORDER ESTABLISHING PROCEDURES) FOR THE ADJUDICATION OF <i>DE</i>) <i>MINIMIS</i> DOMESTIC AND) STOCKWATER CLAIMS)))))))
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Pursuant to the *Memorandum Decision on Petition to Commence Bear River Basin Adjudication*, the *Memorandum Decision on Optional Deferral Process* and the *Commencement Order for the Bear River Basin 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 Bear River Basin Water System*:

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 Bear River Basin 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.

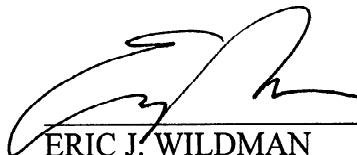
Appeals of any orders or decrees entered under the deferred procedure are governed by the rules applicable to appeals of orders in the Bear River Basin Adjudication.

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

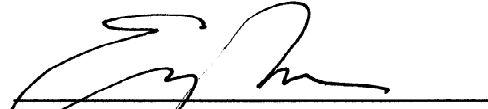


ERIC J. WILDMAN
Presiding Judge
Bear River Basin Adjudication

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 COMMENCEMENT ORDER FOR THE BEAR RIVER BASIN ADJUDICATION was mailed on June 15, 2021, with sufficient first-class postage to the following:

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