

**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 PALOUSE RIVER BASIN WATER SYSTEM) Case No.: 59576)) COMMENCEMENT ORDER FOR THE) PALOUSE RIVER BASIN) ADJUDICATION)))
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**I.
BACKGROUND**

On October 3, 2016, the State of Idaho filed a petition to commence a general adjudication *inter se* of all rights arising under state or federal law to the use of surface and ground water for the Palouse River Basin water system (“*Petition*”). The *Petition* is filed pursuant to Idaho Code § 42-1406B(1). The State and the United States subsequently filed a *Stipulation for Establishment of Procedure for the Adjudication of De Minimis Domestic and Stock Water Claims* (“*Stipulation*”). The *Stipulation* regards the procedures for the adjudication of *de minimis* domestic and stockwater claims as defined by Idaho Code §§ 42-1401A(4) and (11). The commencement hearing on the *Petition* was held in Moscow, Idaho on January 18, 2017. The Court having issued a *Memorandum Decision on Petition to Commence Palouse River Basin General Adjudication* 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, Stipulation, 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 Palouse River Basin water system, including:

- | | |
|---------------------------------------|---|
| Shoshone-Paiute Tribes | Kootenai Indian Tribe |
| Coeur d’Alene Tribe of Indians | Nez Perce Tribal Executive Committee |
| Shoshone-Bannock Tribes | Kalispel Tribe |
| Spokane Tribe of Indians | Confederated Tribes of the Colville Reservation |
| Confederated Salish & Kootenai Tribes | |

2. The Department published the *Notice of Filing* for three consecutive weeks in newspapers of general circulation, including the Lewiston Tribune, Moscow-Pullman Daily News, and St. Maries Gazette Record.

3. The Department filed an *Affidavit of Service* on January 12, 2017.

4. The Court held the commencement hearing on January 18, 2017, in Moscow, Idaho. No one appeared in opposition to the State’s *Petition*.

5. This Court issued a *Memorandum Decision on Petition to Commence Palouse River Basin General Adjudication* 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 stockwater rights as defined by Idaho Code §§ 42-1401A(4) and (11) as set forth in the *Stipulation* complies with the terms of the McCarran Amendment, 43 U.S.C. § 666.

4. The *Petition* is unopposed.

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 Palouse River Basin General Adjudication* issued concurrently herewith is adopted as further findings of fact and conclusions of law.

2. The Palouse River Basin 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 Palouse River Basin water system within the State of Idaho.

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

Beginning on the western boundary line of the state of Idaho at the northwest corner of Latah County in Section 25, Township 44 North, Range 6 West, B.M.; thence continuing in a generally easterly direction from the western boundary of the state along the northern boundary of Latah County to the point where the county line common to Benewah and Latah counties meet the east side of Section 28, Township 43 North, Range 4 West, B.M.; thence continuing easterly into Benewah County along the ridge lines and mountain peaks separating the Palouse River drainage to the south, from the Coeur d'Alene-Spokane River to the north and east, while crossing the county line between Benewah and Latah counties multiple times to a point in the NE ¼ of the NW ¼ of Section 22, Township 42 North, Range 1 West, B.M. where the ridge lines and mountain peaks begin separating the Palouse River drainage to the west and north from the Clearwater River drainage to the east and south; thence continuing generally southerly and westerly along the ridge lines, mountain peaks and hills separating the Palouse River drainage from the Clearwater River drainage, into Nez Perce County to the western boundary of the state; thence north along the western boundary of the state to the point of beginning.

Such that all of the water system is upstream of the state line between Idaho and Washington and includes all surface water and ground waters of; the Cow Creek-Union Flat Creek drainage before such waters reach Washington, the Thorn Creek-Little Thorn Creek drainage before such waters reach Washington, the South Fork of the Palouse River drainage before such waters reach Washington, the Paradise Creek drainage before such waters reach Washington, the Missouri Flat Creek drainage before such waters reach Washington, the Fourmile Creek drainage before such waters reach Washington, the Duffield Creek drainage before such waters reach Washington, the Cedar Creek drainage before such

waters reach Washington, the Silver Creek drainage before such waters reach Washington, the North and South Forks of Pine Creek drainage before such waters reach Washington and the Willow Creek drainage before such waters reach Washington. All of these drainages are ultimately tributaries of the Palouse River in Washington, and contain portions of Benewah, Latah and Nez Perce 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: Benewah, Latah and Nez Perce 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 Palouse 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 stockwater rights as defined by Idaho Code §§ 42-1401(4) and (11) as set forth in the *Stipulation*, within the terms of the McCarran Amendment. The procedures for adjudicating *de minimis* domestic and stockwater claims shall be as set forth in the *Order Establishing Procedures for the Adjudication of De Minimis Domestic and Stockwater Uses in the Palouse River Basin Adjudication* 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 groundwaters 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 stockwater rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A. All claimants asserting rights to the use of surface and groundwaters 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 stockwater rights as defined by subsections (4) and (11) of Idaho Code § 42-1401A.

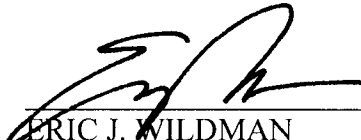
8. The Director is authorized to prepare the *Notice of Order Commencing a General Adjudication* in accordance with Idaho Code § 42-1408(1). The Director shall serve the *Notice of Order* as provided in Idaho Code § 42-1408(2) and send a *Notice of Order* by ordinary mail to all persons who submit a 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.

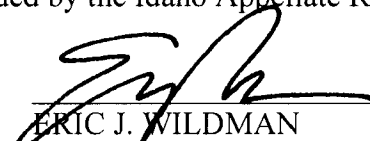
DATED: March 1, 2017.


ERIC J. WILDMAN
Presiding Judge
Palouse River Basin Adjudication

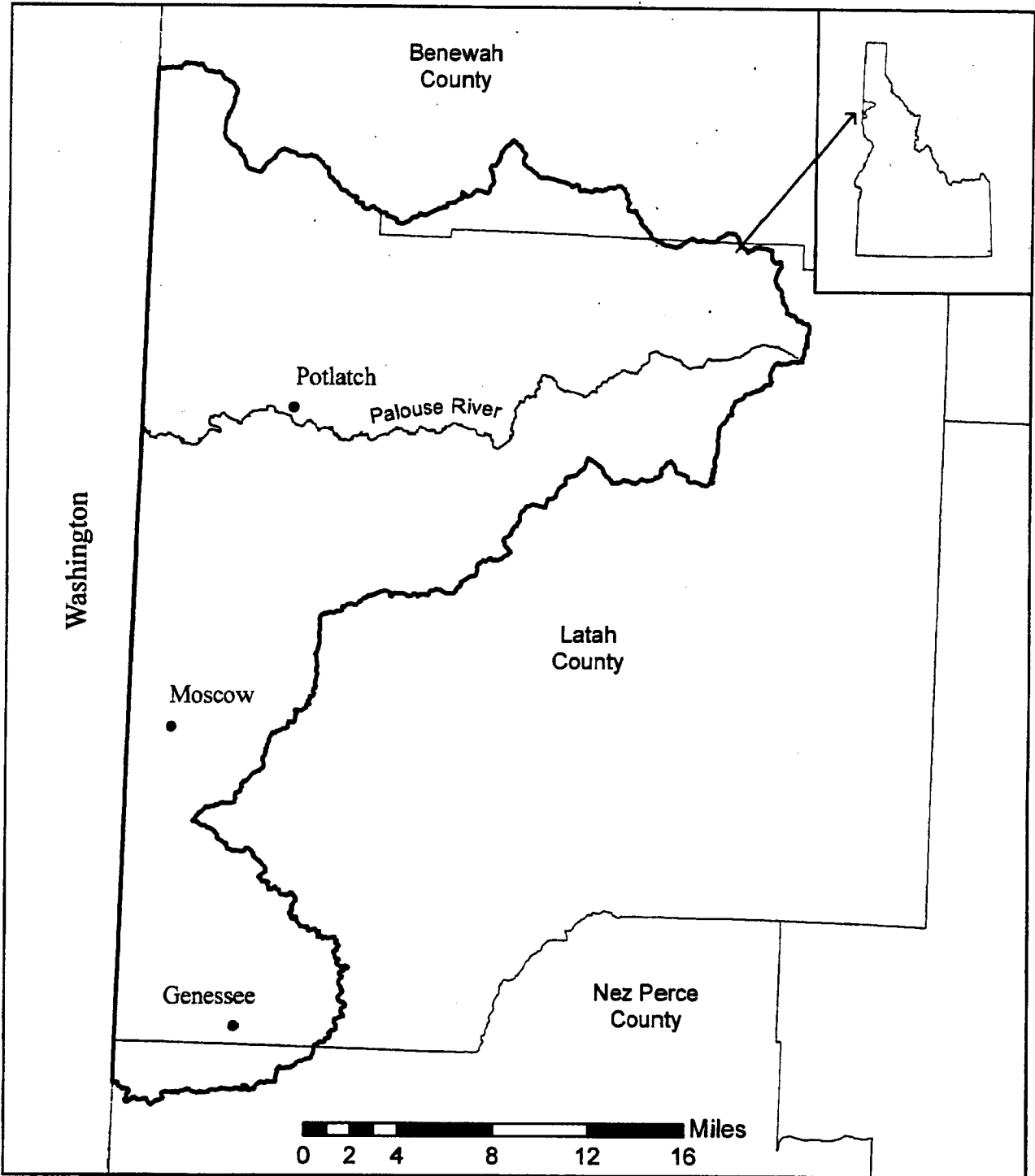
RULE 54(b) CERTIFICATE

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: March 1, 2017.


ERIC J. WILDMAN
Presiding Judge
Palouse River Basin Adjudication

Palouse River Basin Adjudication



Legend

- Cities
- Palouse River Basin Water System Boundary
- County Boundaries



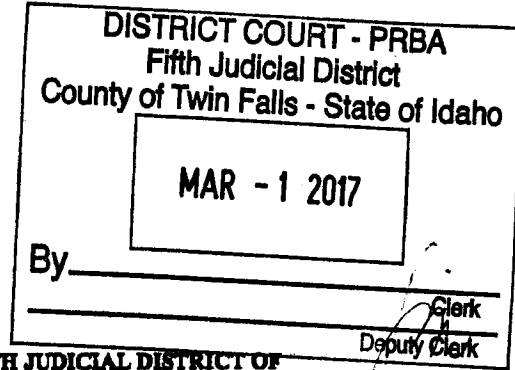
Exhibit 1



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Attorney General

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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 Palouse River Basin Water System))))))	CASE NO. 00-59576 STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF <i>DE MINIMIS</i> DOMESTIC AND STOCK WATER CLAIMS
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DESCRIPTIVE SUMMARY

This document sets forth the agreement between the United States and the State of Idaho regarding the procedure for the adjudication of *de minimis* domestic and stock water claims in the Palouse River Basin Water System.

STIPULATION

The State of Idaho and its agencies and the Director of the Department of Water Resources, by and through their attorney, Clive J. Strong, and the United States, by and through its attorney, Vanessa Boyd Willard, stipulate that the following procedures for the adjudication of *de minimis* domestic and stock water claims as defined by Idaho Code § 42-1401A(4) and (11) shall be used in the above-entitled proceeding:

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 1**



1. All claimants of *de minimis* domestic and stock water uses as defined in Idaho Code § 42-1401A(4) and (11), (hereinafter referred to as "*de minimis* claimants") shall be joined as parties in this proceeding and will be bound by all decrees entered in this case, including the final decree. Any objections which a *de minimis* claimant or any other claimant may have to any and all claims being adjudicated in this proceeding must be timely raised in this proceeding in accordance with Idaho Code § 42-1412 or be forever barred.

2. *De minimis* claimants may elect to have their claims fully adjudicated now or to postpone the adjudication of their claims by following the alternative procedure set forth in paragraph 3, *infra*. If a *de minimis* claimant elects to have his or her domestic or stock water claims (or both) fully adjudicated now, then the *de minimis* claimant must file a notice of claim as provided by Idaho Code § 42-1409 and pay any filing fees required by Idaho Code § 42-1414.

3. *De minimis* claimants may elect to defer adjudication of their claims to a later time in this proceeding; provided however, each deferred claim when finally adjudicated shall be limited to no more than those amounts and for those uses set forth in Idaho Code § 42-1401A(4) and (11) as enacted by the Act of March 24, 1997, ch 374, 1997 Idaho Sess. Laws 1192. Additionally, each *de minimis* claimant must agree to have any domestic or stock water claim decreed prior to seeking authorization from the Director to change the point of diversion, place of use, purpose of use, or period of use; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of each right to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. There shall be no presumption that either the diversion requirement or the actual consumptive use for the water right to be changed was equal to 13,000 gallons per day or any other quantity greater than actual historic use. If this option is elected, a deferred *de minimis*

STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 2

claimant will not be required to file a notice of claim at this time or to pay any filing fee until such time as the claimant seeks to have the deferred claim decreed.

A. Election of this procedure will not result in a loss of such *de minimis* domestic or stock water claim nor will such deferred *de minimis* claimant be precluded from establishing the requisite elements of his or her *de minimis* claim at a subsequent time using the summary procedure described herein.

B. As provided by Idaho Code § 42-604, as rights in a basin are adjudicated, the Idaho Department of Water Resources will establish water districts. If a call is made for water within a water district, the Director will administer all rights within the water district pursuant to Idaho Code § 42-607. 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 prior to requesting distribution pursuant to Idaho Code § 42-607.

C. In order to obtain an adjudicated water right, a claimant of a deferred *de minimis* domestic or stock water claim shall file a motion for determination of the claim with this court.

D. The following provisions are required to institute a determination of a deferred *de minimis* domestic or stock water claim.

1. The deferred *de minimis* claimant shall file with this district court a motion for determination of the domestic and stock water claim with an attached notice of claim on a form provided by the Director and shall serve the State of Idaho, the Director, the United States, and persons against whom relief is sought. 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 the

STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 3

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. 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. A deferred *de minimis* 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 deferred *de minimis* 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 deferred *de minimis* claimant shall contest the Director's costs, the district court shall then determine a reasonable cost to be paid by the deferred *de minimis* claimant.

4. The deferred *de minimis* claimants 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.
5. 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.
6. 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.
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, the United States, and the persons against whom relief is sought.

8. The deferred *de minimis* claimant shall have the burdens of proof and of persuasion in establishing each and every element of his or her claim.

9. Venue for hearings on deferred domestic and stock water claims shall be in the county in which the point of diversion is located unless otherwise ordered by this district court.

E. Appeals of any orders or decrees entered under this summary procedure shall be governed by the rules applicable to appeals of orders entered in the Palouse River Basin Water System.

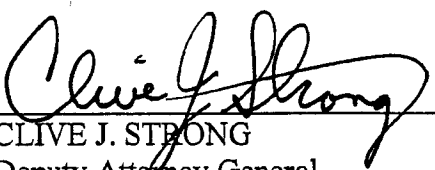
F. The district court retains continuing jurisdiction of the subject matter in this proceeding, and the parties to this proceeding, for the purpose of adjudicating deferred *de minimis* domestic or stock water claims. The district court on the motion of any party hereto, including a successor-in-interest, may adjudicate a deferred *de minimis* domestic or stock water claim under the alternative procedure set forth in this stipulation.

4. Counsel for the United States is entering into this stipulation in order to accommodate the State of Idaho's desire to streamline the instant phase of the adjudication. Counsel for the United States and the State of Idaho agree that the proposed procedures meet the requirements of the McCarran Amendment, 43 U.S.C. 666, because all water users, including those claiming *de minimis* domestic and stock watering 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 procedures set forth in this stipulation. It should not be inferred, however, that by signing this stipulation, the United States recommends or otherwise encourages any water user to elect to defer the adjudication of his or her water rights.

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 6**

DATED this 17th day of January, 2017.

STATE OF IDAHO


CLIVE J. STRONG
Deputy Attorney General
Idaho Attorney General's Office

DATED this 21st day of February, 2017.

UNITED STATES



VANESSA BOYD WILLARD
Trial Attorney
United States Department of Justice

**STIPULATION FOR ESTABLISHMENT OF PROCEDURE FOR THE ADJUDICATION OF
DE MINIMIS DOMESTIC AND STOCK WATER CLAIMS - 8**

CERTIFICATE OF MAILING

I certify that a true and correct copy of the COMENCEMENT ORDER FOR THE PALOUSE RIVER BASIN ADJUDICATION was mailed on March 01, 2017, with sufficient first-class postage to the following

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