

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

JUN 26 2025

RAÚL R. LABRADOR
ATTORNEY GENERAL

SCOTT L. CAMPBELL, ISB No. 2251
Deputy Attorney General
Chief, Energy and Natural Resources Division

JOY M. VEGA, ISB No. 7887
DAVID S. PERKINS, ISB No. 4381
ROWDY J. KELLER, ISB No. 12494
Deputy Attorneys General
Energy and Natural Resources Division
700 W. State St, 2nd Floor
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8072
Email: joy.vega@ag.idaho.gov
david.perkins@ag.idaho.gov
rowdy.keller@ag.idaho.gov

By

Clerk

Deputy Clerk

Attorneys for Petitioner State of Idaho

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
KOOTENAI RIVER BASIN WATER
SYSTEM

Case No. 89576

STATE OF IDAHO'S NOTICE OF
APPEARANCE, PREHEARING
STATEMENT, AND MEMORANDUM
OF LAW

The State of Idaho ("State"), by and through its attorneys of record, file this
Notice of Appearance, Prehearing Statement, and Memorandum of Law in
accordance with the Court's January 9, 2025 *Order Setting Commencement Hearing*
and Procedures for Hearing.

STATE OF IDAHO'S NOTICE OF APPEARANCE, PREHEARING STATEMENT, AND MEMORANDUM OF
LAW-1

NOTICE OF APPEARANCE

NOTICE is hereby given that David Perkins and Rowdy Keller, Deputy Attorneys General, for the Office of the Attorney General, will appear at the Commencement Hearing set in this matter for July 15, 2025, and present evidence and legal arguments in support of the *Petition to Commence Kootenai River Basin Adjudication* filed on January 3, 2025 ("*Petition*").

PREHEARING STATEMENT

A. Statement of Issues

The State plans to present arguments and evidence to support that 1) the boundaries of the water system as proposed by the *Petition* are in compliance with the terms of the McCarran Amendment, and 2) the proposed deferral procedure set forth in the *Amended Notice of Filing Petition to Commence General Adjudication of Water Rights* ("*Notice*")¹ for the adjudication of *de minimis* domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11) is in compliance with the terms of the McCarran Amendment. Nevertheless, the State and the United States are actively negotiating revisions to the proposed deferral procedures and these parties will provide this Court with an update regarding the negotiations at the Commencement Hearing on July 15, 2025.

The State reserves the right to present additional evidence and legal argument at the Commencement Hearing in response to any argument or issues raised by

¹ A copy of the *Notice* is attached as Exhibit 1 to the *Amended Affidavit of Service*, Case No. 89576 filed with the Court on June 24, 2025. For the Court's convenience, the *Notice* is attached hereto as Exhibit 1.
STATE OF IDAHO'S NOTICE OF APPEARANCE, PREHEARING STATEMENT, AND MEMORANDUM OF
LAW-2

other parties.

B. Documents and Testimony to be Offered into Evidence²

Exhibit 2: Affidavit of Craig Saxton, Water Allocation Bureau Chief, Idaho Department of Water Resources ("IDWR").

For the convenience of the parties and the Court, the State has attached the Affidavit of Craig Saxton, setting forth the testimony Mr. Saxton would provide at the Commencement Hearing. Given the unique difficulties of presenting direct testimony over a videoconference, the State requests that the Affidavit of Craig Saxton be accepted in lieu of Mr. Saxton offering direct testimony at the hearing should no other party object. Mr. Saxton will be available at the Commencement Hearing to offer additional testimony if needed.

MEMORANDUM OF LAW

A. The boundaries of the water system, as proposed by the *Petition*, are in compliance with the terms of the McCarran Amendment.

The McCarran Amendment waives the United States' sovereign immunity in a water rights adjudication of a "river system or other source." 43 U.S.C. § 666. This waiver also extends to tribal water rights. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 809, 96 S. Ct. 1236, 1242, 47 L. Ed. 2d 483 (1976).

The Idaho Supreme Court previously held that the McCarran Amendment

² The map of the Kootenai River basin water system is attached as Exhibit A to the Affidavit of Craig Saxton, and to the *Petition* which is already on file with the Court.
STATE OF IDAHO'S NOTICE OF APPEARANCE, PREHEARING STATEMENT, AND MEMORANDUM OF LAW-3

waiver of immunity applies where there is a comprehensive adjudication of all the water rights on the stream system within a state, including rights to use the water of the tributaries. *In re Snake River Basin Water Sys.*, 115 Idaho 1, 6, 764 P.2d 78, 83 (1988). For the Kootenai River Basin Adjudication to be commenced within the terms of the McCarran Amendment, this Court must find that the proposed boundaries of the adjudication include all hydrologically connected surface and ground water sources within the system located in the State of Idaho and include all claims to the use of water within that same system. *See Memorandum Decision on Petition to Commence Coeur d'Alene-Spokane River Basin General Adjudication*, Case No. 49576 at 7 (Nov. 12, 2008).

The *Petition* proposes to adjudicate "all rights to the use of surface and ground waters of the Kootenai River basin water system." *Petition* at 4. The *Petition* describes the boundaries of the Kootenai River basin water system as follows:

Beginning at the northeast corner of the state of Idaho at a point located on the Canadian border described as northeast corner of Protracted Boundary 40, Township 65 North, Range 3 East, B.M. which marks the northeast corner of the state of Idaho and the northwest corner of the state of Montana;

Thence continuing southerly along the border shared by the state of Idaho and the state of Montana to a point in Bonner County on the eastern border of Idaho in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 57 North, Range 3 East, B.M.;

Thence continuing northwesterly along the ridge lines and mountain peaks that separate the Callahan Creek drainage to the northeast from the Pack River drainage to the southwest to a point in Boundary County marking the peak of Bald Eagle Mountain in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, Township 60 North, Range 2 East, B.M.;

Thence continuing westerly and then northerly along the ridge lines and mountain peaks that separate the Pack River drainage to the south from

the Deep Creek drainage to the north, crossing the county line between Boundary and Bonner counties twice, to the top of Dodge Peak in Boundary County in the NW¼SW¼ of Section 12, Township 60 North, Range 2 West, B.M.;

Thence continuing northerly along the ridge lines and mountain peaks that separate the Kootenai River drainage to the east from the Pack River drainage to the west, to the top of Harrison Peak in the NE¼ NW¼ of Section 31, Township 62 North, Range 02 West, B.M.;

Thence, continuing northerly through Boundary County along the ridge lines and mountain peaks separating the Priest River drainage to the west from the Kootenai River drainage to the east, to a topographic high point located on the border shared by the state of Idaho and Canada, within Protracted Boundary 38, Township 65 North, Range 04 West, B.M.;

Thence continuing easterly along the northern border of the state of Idaho to the point of beginning.

Id.

In determining the boundary described above, the Idaho Department of Water Resources ("IDWR") included all surface and ground water in IDWR Administrative Basins 98. *Affidavit of Craig Saxton* at ¶8. The proposed boundary encompasses the entirety of the Kootenai River Basin located in Idaho, including all ground water and surface water tributaries. *Id.* There are no classes of uses proposed to be excluded from the adjudication. *Petition* at 5.

The State, therefore, respectfully requests that this Court conclude that the proposed boundaries for the Kootenai River Basin Adjudication satisfy the requirements of a McCarran Amendment adjudication.

- B. The proposed deferral procedure for the adjudication of *de minimis* domestic and stock water rights as defined by Idaho Code § 42-1401A (4) and (11) is in compliance with the terms of the McCarran Amendment.

As provided in Idaho Code § 42-1406D, the *Petition* requested that the Kootenai River Basin Adjudication only be commenced if this Court determines it is possible to defer the adjudication of *de minimis* domestic and stock water (“*de minimis*”) rights as defined by Idaho Code § 42-1401A (4) and (11) within the terms of the McCarran amendment. *Petition* at 3. The *Notice* set forth the proposed procedures for deferral of the adjudication of *de minimis* rights. *Notice* at 4–5.

Under the proposed procedure, all water users on the water system, including *de minimis* users, will be served and joined as parties and will be bound by orders or decrees entered in the adjudication. *Id.* at 4. The *de minimis* users will not be able to have their rights administered against decreed rights until their claims have been adjudicated. *Id.* *De minimis* rights can either be adjudicated in the initial phase, or pursuant to the procedures set forth in the *Notice*. *Id.* However, *de minimis* rights holders “will be joined as parties to the adjudication and will be bound by any orders or decrees entered in the adjudication.” See *Memorandum Decision on Optional Deferral Process*, Case No. 69576 at 8 (June 15, 2021). Once a partial decree is issued, it will be incorporated into and subject to the Final Decree issued for the entire adjudication. *Notice* at 4.

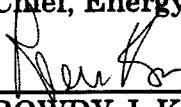
The proposed procedures set forth in the *Notice* are identical to the procedures that this Court ruled complied with the terms of the McCarran Amendment and subsequently adopted in the Coeur d'Alene-Spokane River Basin Adjudication. See

Memorandum Decision on Petition to Commence Coeur d'Alene-Spokane River Basin General Adjudication, Case No. 49576 at 19–25; *Order Establishing Procedures for the Adjudication of De Minimis Domestic and Stockwater Claims in the Coeur-Spokane River Basin Adjudication*, Case No. 49576 (Nov. 12, 2008). As this Court previously concluded, the deferral of adjudicating *de minimis* rights does not undermine the comprehensiveness of the adjudication. *Memorandum Decision on Petition to Commence Coeur d'Alene-Spokane River Basin General Adjudication*, Case No. 49576 at 23.

The State and the United States have been negotiating revised proposed procedures for the deferred adjudication of *de minimis* domestic and stock water claims. The parties have not reached a resolution as of the date of this filing but are still in negotiations. The State will provide this Court with an update regarding the negotiations at the Commencement Hearing on July 15, 2025.

In addition to the above issues, the State reserves the right to present additional arguments at the Commencement Hearing in response to any arguments or issues raised by other parties.

Respectfully submitted this 25th day of June, 2025.

RAUL R. LABRADOR
Attorney General
SCOTT L. CAMPBELL
Chief, Energy and Natural Resources Division


ROWDY J. KELLER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2025, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

CLERK OF THE DISTRICT COURT
KOOTENAI RIVER BASIN ADJUDICATION
253 THIRD AVE NORTH
P.O. BOX 2707
TWIN FALLS, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Federal Express
- ☐ Facsimile: (208)736-2121
- ☐ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
P.O. BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile:
- ☒ Statehouse Mail

US DEPARTMENT OF JUSTICE
ENV & NATL' RESOURCES DIV.
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

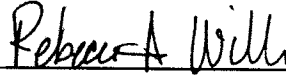
- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☒ Email: mark.widerschein@usdoj.gov

WILLIAM BARQUIN
COUNSEL FOR THE KOOTENAI TRIBE OF
IDAHO
1000 SW BROADWAY STREET 1060
PORTLAND, OR 97205

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☒ Email: wbarquin@kootenai.org

THOMAS L. MURPHY
COUNSEL FOR THE KOOTENAI TRIBE OF
IDAHO
250 ARAPAHOE AVE.
BOULDER, CO 80302

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☒ Email: murphy@narf.org



REBECCA A. WILLS
Legal Assistant to Deputy Attorney
General Rowdy Keller

EXHIBIT 1

AMENDED NOTICE OF FILING PETITION

**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. 89576
ADJUDICATION OF RIGHTS TO)	
THE USE OF WATER FROM THE)	AMENDED NOTICE OF
KOOTENAI RIVER BASIN WATER)	FILING PETITION TO
SYSTEM)	COMMENCE GENERAL
)	ADJUDICATION OF WATER
)	RIGHTS

The previous Notice of Filing Petition as published by the Idaho Department of Water Resources has been updated pursuant to the March 27, 2025 *Order Granting Joint Motion for Extension* issued by the Idaho Water Adjudications Court. The date of the commencement hearing on the Petition has been reset as indicated below.

TO: ALL PERSONS OWNING RIGHTS TO THE USE OF WATER FROM THE
KOOTENAI RIVER BASIN WATER SYSTEM

YOU ARE HEREBY NOTIFIED that the State of Idaho, by and through the Office of the Attorney General for the State of Idaho, filed a *Petition to Commence Kootenai River Basin Adjudication* to commence a general adjudication of water rights from the Kootenai River basin water system on January 3, 2025, pursuant to Idaho Code § 42-1406D. A hearing on the *Petition* (called a commencement hearing) has been scheduled to begin on July 15, 2025, at 1:30 p.m. Pacific Time (PT). The hearing will be conducted via Zoom from the Snake River Basin Adjudication Courthouse in Twin Falls before the Honorable Eric Wildman. Instructions to join the Zoom hearing are attached to this Notice.

The purpose of the adjudication is to determine all rights arising under state or federal law to the use of surface and ground water from the Kootenai River basin water system. THE PURPOSE OF THIS NOTICE IS TO DESCRIBE BRIEFLY THE *PETITION* AND TO INFORM YOU OF THE MATTERS TO BE DETERMINED BY THE DISTRICT COURT AT THE COMMENCEMENT HEARING; NOTICE WILL BE GIVEN AT A LATER DATE AS TO WHEN AND WHERE TO FILE YOUR NOTICE OF CLAIM TO A WATER RIGHT.

The *Petition* asks the court to enter an order (called a commencement order) starting a general adjudication of the Kootenai River basin water system, authorizing the Director of the Idaho Department of Water Resources (Director) to investigate all uses of water from the water system and prepare a report of water rights, and directing all claimants of water rights from the water system to file a notice of claim to a water right with the Director unless claimants elect to defer the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11).



The *Petition* asks the court to determine the boundaries of the water system to be adjudicated in this action. The Director proposes to adjudicate that portion of the Kootenai River basin within the state of Idaho. A map illustrating the Kootenai River basin water system and the proposed boundaries of the water system to be adjudicated is included in this Notice.

The *Petition* lists the counties within the proposed boundaries of the water system and states that a portion of each county is within the proposed boundaries. There are no counties wholly contained in the proposed boundaries.

The *Petition* asks the court to require persons holding a permit for which proof of beneficial use was filed on or prior to the date the commencement order is issued to file a notice of claim.

The *Petition* asks the court to enter an order establishing a procedure to defer the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11). The Director's proposed process for the deferral of domestic and stock water rights is presented below.

The *Petition* asks the court to approve the manner in which the Director proposes to conduct the second round of notifying claimants of their duty to file a notice of claim. The first round of notice is described in Idaho Code § 42-1408(2)-(3); the second round of notice is described in Idaho Code § 42-1408(4).

In response to the *Petition*, the district court will determine the following matters, among others:

- a. The boundaries of the water system;
- b. Whether the boundaries of the water system as proposed by the *Petition* are in compliance with the terms of the McCarran Amendment;
- c. Whether the proposed deferral procedure (below) for the adjudication of domestic and stock water rights as defined by Idaho Code § 42-1401A(4) and (11) is in compliance with the terms of the McCarran Amendment;
- d. Any other uses of water excluded from the adjudication proceedings; and
- e. Any other matter raised by the *Petition*.

THE DISTRICT COURT WILL HEAR EVIDENCE AND ARGUMENTS FROM ANY PERSONS IN RESPONSE TO ANY MATTER RAISED BY THE *PETITION*. ANY PERSON WISHING TO PRESENT EVIDENCE OR ARGUMENT AT THE COMMENCEMENT HEARING MUST COMPLY WITH CERTAIN PROCEDURES ORDERED BY THE DISTRICT COURT. The procedures are set forth in the *Order Setting Commencement Hearing and Procedures for Hearing*, issued by the district court on January 9, 2025. The *Order* addresses the requirements for the Commencement Hearing, including the following:

1. Each attorney who represents a person interested in the Kootenai River Basin Adjudication or interested party acting *pro se* (representing yourself without an attorney) who intends to present evidence or argument at the Commencement

Hearing shall file a *Notice of Appearance* with the district court on or before 5:00 P.M. PT, **June 26, 2025**.

2. Each attorney or *pro se* litigant who intends to present evidence shall also file a pre-hearing statement with the district court on or before 5:00 P.M. PT, **June 26, 2025**. The pre-hearing statement shall include:
 - a. A statement of issues raised;
 - b. A list of documents to be offered into evidence;
 - c. A list of witnesses; and
 - d. The estimated amount of time needed for direct examination of each witness.
3. 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. PT, **June 26, 2025**.
4. Each attorney or *pro se* litigant shall serve the State of Idaho via the Office of the Attorney General, the Director and the United States with any papers filed or lodged with the district court on or before 5:00 p.m. PT, **June 26, 2025**. The addresses for service are as follows:
 - a. Chief, Energy and Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010
 - 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
5. 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:

Kootenai River Basin Adjudication
c/o SRBA District Court
PO Box 2707
Twin Falls, ID 83303-2707

6. Fax filing is also available pursuant to Rule 5(d)(3) of the Idaho Rules of Civil Procedure, though faxed documents are limited to ten (10) pages, including attachments and exhibits. Documents can be fax filed at (208) 736-2121.
7. The district court may relieve any attorney or any *pro se* litigant from the requirements of the *Order* for good cause shown.

Copies of the *Petition* and the *Order* may be obtained at <https://idwr.idaho.gov/water-rights/adjudication/KRBA.html> or from any office of the Idaho Department of Water Resources (IDWR) or from the district court.

PROPOSED PROCESS TO DEFER THE ADJUDICATION OF DOMESTIC AND STOCK WATER RIGHTS:

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 Kootenai 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). Deferral 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 chooses 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 States 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, the Director, the 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 Kootenai 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.

Mathew Weaver, Director
Idaho Department of Water Resources

HOW TO ACCESS THE HEARING USING ZOOM:

Hearing on Petition for Commencement of the Kootenai River Basin Adjudication

Time: July 15, 2025, at 1:30 P.M. Pacific Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/join>

Meeting ID: 949 6358 1663

Passcode: 459962

By Telephone

Toll free: (877) 853-5247 or (888) 788-0099

Meeting ID: 949 6358 1663

Passcode: 459962

1. How to join the meeting by telephone

- Dial the phone number listed above.
- When prompted, enter the meeting ID provided above, followed by #.
- When prompted, enter the meeting passcode provided above.
- More information on how to use a telephone when connecting to a Zoom meeting can be found here:
<https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>

2. How to join the meeting online

- In your browser enter the link <https://www.zoom.us/join>
- Enter the meeting ID provided above. You may see a spinning wheel while the connection is made.
- Follow the instructions on the screen to either download and install the Zoom client, or to join the meeting via your web browser.
- When prompted, enter the meeting passcode provided above.
- Once the connection is made, you will be placed in a Waiting Room. A message will appear "Please wait, the meeting host will let you in soon."
- When court begins, you will be brought into the meeting from the Waiting Room.

3. Video (when joining online)

- Start your video by clicking **Start Video**, located in the lower-left corner of the window.

4. Audio

- Your sound will be on mute upon entry.
- Remain muted unless you are asked to speak to the court. Please be sure you have no background noise while speaking. You may be muted or removed from the hearing if causing a disruption.
- To unmute yourself, click the **Unmute** button, located in the lower-left corner of the window.
- If joining only by telephone, press *6 to toggle between unmute/mute.

5. Courtroom standards

- Participants should dress and act as if they were physically in the courtroom.
- Do not talk over others.
- If joining online, you may raise your hand from the **Participants** tab at the bottom of the window if you would like to speak with the court or if you need to have a conversation with your counsel.

6. Assistance

- Additional resources on how to use Zoom to participate in a remote court hearing can be found at <http://isc.idaho.gov/isc-zoom>

If you have questions regarding this remote hearing or the steps above, please contact the Deputy Clerk of the Snake River Basin Adjudication District Court at 208-736-3011.

EXHIBIT 2

Affidavit of Craig L. Saxton

RAÚL R. LABRADOR
Attorney General

SCOTT L. CAMPBELL (ISB # 2251)
Chief, Energy and Natural Resources Division

DAVID PERKINS (ISB # 4381)
Deputy Attorney General
ROWDY KELLER (ISB # 12494)
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: 208-334-2400
Facsimile: 208-854-8072
david.perkins@ag.idaho.gov
rowdy.keller@ag.idaho.gov
Attorneys for the State of Idaho

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
KOOTENAI RIVER BASIN WATER
SYSTEM

Case No. 00-89576

AFFIDAVIT OF
CRAIG L. SAXTON

STATE OF IDAHO)
) ss.
County of Ada)

I, Craig L. Saxton, being first duly sworn on oath, depose and state as follows:

1. I am over the age of eighteen and am competent to testify to the matters contained herein. The following is based on my personal knowledge.

2. I am the Water Allocation Bureau Chief for the Idaho Department of Water Resources ("the Department"). I have been in this position since November 24, 2024. I have worked for the Department for twenty-five (25) years.

3. I graduated from the University of Idaho in 1996 with a Bachelor of Science degree in Geology.

4. I began working for the Department in 2000 as a Water Resource Agent and held that position until 2002. In 2002, I was promoted to Senior Water Resource Agent and held that position until 2006. In 2006, I was promoted to Water Rights Supervisor and held that position until 2011. In 2011, I became an Adjudication Technical Analyst (Analyst 3) and held that position until January of 2020. In January of 2020, I was promoted to Adjudication Section Manager and held that position until November of 2024. On November 18, 2024, I was promoted to Water Allocation Bureau Chief. I still hold that position.

5. My coursework in school and my work at the Department required, among other things, that I be able to interpret and work with maps, Geographic Information Systems ("GIS"), and legal descriptions of physical locations. I have received extensive training in interpreting and working with maps, GIS systems, and legal descriptions. My work at the Department has frequently required that I interpret legal descriptions of various physical locations and boundaries, such as points of diversion, places of use, and hydrologic basins, as well as other types of points or areas. I often draft descriptions of physical locations and boundaries. My work at the Department has also frequently required me to use maps and GIS systems to identify the physical locations of points or areas described in legal descriptions.

6. I drafted the description of the proposed boundaries of the Kootenai River Water System in Paragraph 11 of the *Petition to Commence Kootenai River Adjudication* (January 3, 2025) ("*Petition*"). This description uses the boundaries of the Department's Administrative Basin 98 as the basis for identifying the Kootenai River Water System. Administrative Basin 98 is the hydrologic basin defining the portions of the Kootenai River drainage within Idaho. It is

the only Administrative Basin in northern Idaho that was not included in the Northern Idaho Adjudication.

7. In drafting the boundary description in Paragraph 11 of the *Petition*, I used a GIS mapping system and overlaid the boundaries of Administrative Basin 98 on topographical maps of these same areas prepared by the United States Geological Survey ("USGS"). The textual description of the proposed boundaries of the Kootenai River Water System in Paragraph 11 of the *Petition* is based on the physical features and legal boundaries shown in the USGS topographical maps. In drafting boundary descriptions of hydrologic basins, it is standard practice to use and rely upon GIS systems and USGS topographical maps.

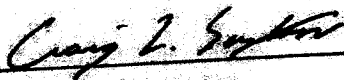
8. The proposed boundaries of the Kootenai River Water System as described in Paragraph 11 of the *Petition* include all surface water and ground water within Administrative Basin 98. This includes, but is not limited to, the surface and ground waters of the Kootenai River drainage downstream from the border shared by Idaho and Montana and upstream from the Canadian border; those portions of Bog Creek, Blue Joe Creek and Grass Creek and drainages before such waters reach Canada, all of which are ultimately tributaries of the Kootenai River in Canada; that portion of Boundary Creek drainage within Idaho, downstream of where it enters Idaho and upstream of where it exits Idaho as it crosses the border shared by Idaho and Canada; those portions of Dodge Creek, Mission Creek, East Fork Mission Creek, Gillon Creek and the Moyie River drainages downstream from the border shared by Idaho and Canada; the Canuck Creek drainage downstream from the border shared by Idaho and Montana and upstream from the Canadian border; those portions of Faro Creek, Keno Creek, Skin Creek, Kingsley Creek and Lime Creek drainages downstream from the border shared by Idaho and Montana; those portions of Curley Creek within Idaho, upstream of the boarder shared by Idaho and Montana, and

downstream of the border as it flows back into Idaho; those portions of Idamont Creek, Cabin Creek, Star Creek, Ruby Creek, North and South Callahan Creek, Benning Creek, West Fork Keeler Creek, Halverson Creek, and Cliff Creek drainages before such waters reach Montana, all of which are ultimately tributaries of the Kootenai River in Montana, and contains portions of Bonner and Boundary counties of Idaho.

9. **Exhibit A** to the *Petition* is a map that was prepared by the Department staff at my request that accurately shows the proposed boundaries of the Kootenai River Water System as described in Paragraph 11 of the *Petition*.


10. Based on the foregoing, the boundaries of the water system proposed in the *Petition* include all surface waters and ground waters of the Kootenai River basin as defined by Idaho Code § 42-1406D(1).

DATED this 24th day of March, 2025.

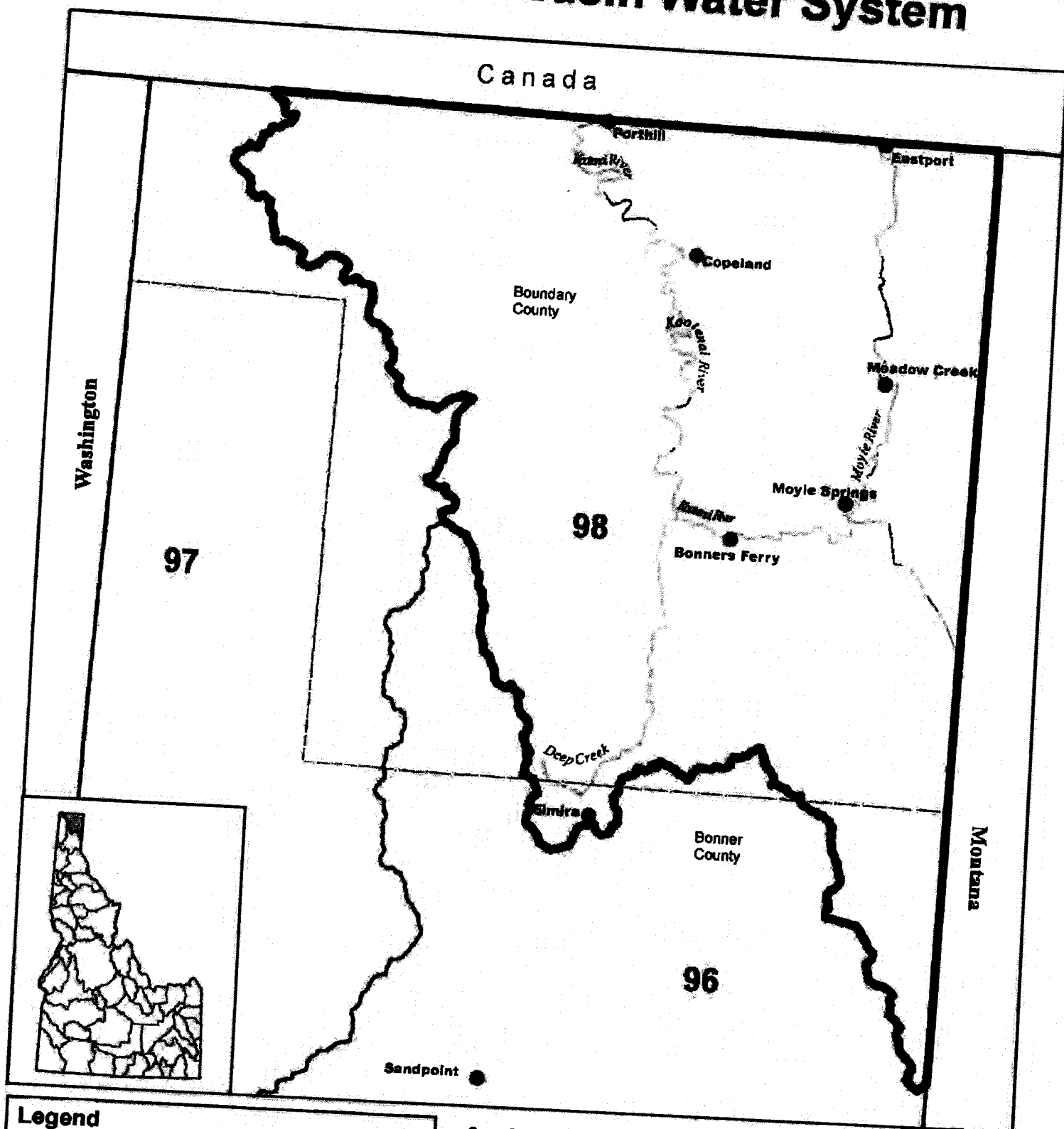

CRAIG L. SAXTON
Water Allocation Bureau Chief
Idaho Department of Water Resources

SUBSCRIBED AND SWORN before me this 24th day of March, 2025.




NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 12-12-2030

Kootenai River Basin Water System



Legend

- Cities
- County Boundaries
- ▬ Kootenai River Basin Water System Boundary
- ▬ IDWR Administrative Basins

0 2.75 5.5 11 16.5 22 Miles



Exhibit A