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Attorneys for Bear River Canal Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REJECTION OF
CLAIM NOS. 11-289, 13-980, 13-981, 13-
982, AND 2 BENEFICIAL USE CLAIMS
FILED BY THE BEAR RIVER CANAL
COMPANY IN THE BEAR RIVER BASIN
ADJUDICATION

**PROTEST AND PETITION FOR
HEARING**

Bear Rover Canal Company (“BRCC”), by and through its attorney of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby files this *Protest and Petition for Hearing* (“Petition”) regarding the Idaho Department of Water Resources’ (“IDWR” or “Department”) issuance of a letter dated December 22, 2025, rejecting claim nos. 11-289, 13-980, 13-981, 13-982, and two beneficial use claims filed by BRCC in the Bear River Basin Adjudication (“BRBA”). The letter was authored by Christopher Holmes, Water Resources Supervisor for IDWR (Preston Field Office). A copy of the letter is attached hereto as **Exhibit 1**.

This *Petition* is filed pursuant to Idaho Code § 42-1701A.

DATED this 5th day of January, 2026.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2026, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: PROTEST AND PETITION FOR HEARING

ORIGINAL TO: Mathew Weaver

Director

Idaho Department of Water Resources

file@idwr.idaho.gov

mathew.weaver@idwr.idaho.gov

Christopher Holmes

Water Resources Supervisor

Idaho Department of Water Resources, Preston Field Office

Christopher.Holmes@idwr.idaho.gov



Robert L. Harris

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EXHIBIT 1



IDAHO DEPARTMENT OF
WATER RESOURCES

Preston Field Office • 325 East 600 South, Suite 300 • Preston, ID 83263-4921
Phone: 208-701-7200 • Email: prestoninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mat Weaver

December 22, 2025

BEAR RIVER CANAL CO
C/O TREVOR NIELSON
275 N 1600 E
TREMONTON UT 84337

SUBJECT: Bear River Basin Adjudication (BRBA) Claims Rejection

Dear Claimant,

On November 26, 2025 the Bear River Canal Company (“BRCC”) filed BRBA water right claim nos. 11-289, 13-980, 13-981, 13-982, and two beneficial use claims with the Idaho Department of Water Resources (IDWR). IDWR has determined that these six claims cannot be accepted in the BRBA. This letter is to notify you that the claims are rejected, explain the basis for the rejection, and identify the options for the BRCC to challenge the rejection.

Idaho Code § 42-1406C authorizes the Director of IDWR to petition the district court to commence a general adjudication of water rights in the Bear River basin. At the request of the Director of IDWR, the State of Idaho filed a petition with the district court on November 20, 2020 and the district court issued a *Commencement Order* for the BRBA on June 15, 2021. In Idaho, the term “general adjudication” means “an action both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system... and for the administration of those rights.” Idaho Code § 42-1401A(5). The term “water system” includes “all rivers, streams, lakes, springs, ground waters, or other sources within this state, including any river system or other source, as used in 43 U.S.C. section 666.” Idaho Code § 42-1401A(12).

“For purposes of adjudicating water rights, the Bear River basin is defined as all waters of the state of Idaho, both ground water and surface water, flowing into or toward the Bear River or flowing toward the Great Salt Lake in the Great Basin.” Idaho Code § 42-1406C(2). The *Commencement Order* for the BRBA included a description of the boundaries for the Bear River basin water system and stated that “[a]ll waters in the state of Idaho within the boundaries set forth above are included in this adjudication.” *Commencement Order* at 3. The boundaries established did not extend into Utah or include any lands in Utah.

The clearly defined jurisdictional scope of a general adjudication of water rights in Idaho includes only water systems within the state of Idaho. Idaho Code § 42-1401A(5) defines “general adjudication” as “an action for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system” The claims submitted by BRCC describe points of diversion, conveyance systems, and places of use located entirely within the state of Utah. IDWR is only authorized to receive and evaluate claims for water rights within the BRBA jurisdictional limits with points of diversion and/or places of use within the state

of Idaho. IDWR does not have the authority to accept and process these claims. Although the Bear River flows through the state of Idaho and into the state of Utah, the Bear River is no longer considered a source of water within the state of Idaho once the river crosses the Idaho-Utah state line. These claims are not for water subject to the state of Idaho's management and IDWR does not have the ability to recommend them in the BRBA.

While the 1920 Dietrich Decree recognized certain water rights at the Wheelon Dam (Cutler Dam) in the state of Utah, the decree was the result of an action brought in federal court and was not governed by the adjudication statutes of the state of Idaho or the jurisdictional limits contained therein. Further, the 1920 Dietrich Decree acknowledged that it did not adjudicate the water rights at Wheelon Dam. The following passages are from the introductory paragraphs of the 1920 Dietrich Decree:

[T]here is hereby drawn within the jurisdiction of this court, for distribution for beneficial uses, under and pursuant to the terms of this decree, all that portion of Bear River, as above described, commencing at a point directly north of Bear Lake . . . thence generally northwesterly through Idaho, to a point near the town of Alexander, thence in a general southerly direction to the boundary line between the States of Idaho and Utah, together with all intervening tributaries of the Bear River, which are decreed to constitute a single inter-dependent river system, to be administered under the terms of this decree.

The plaintiff, Utah Power & Light Company, and the defendant, Utah-Idaho Sugar Company, have certain rights to the use of the waters of Bear River with points of diversion in Utah below the Utah-Idaho state line, which rights are included in the schedule of rights herein decreed. **The inclusion of said rights in the said schedule is not to be construed as a decree *in rem*, establishing said rights, or as an adjudication of title to said rights, which have attached in a state or district beyond the jurisdiction of this court** (emphasis added).

IDWR created digital water right records and assigned water right numbers for the water rights listed in the 1920 Dietrich Decree, including Wheelon Dam. However, the act of creating water right records does not overcome the jurisdictional issues described above.

The department recognizes that there may be arguments in support of filing these claims in the BRBA. IDWR's decision to reject the claims provides you with an opportunity to challenge that action under Idaho Code § 42-1701A if you so choose. Please contact me if you have any questions regarding this rejection.

Sincerely,



Christopher Holmes
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