

**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)	Subcase No. 91-00005-34
)	
Case No. 39576)	(Basin-Wide Issue, Basin 34)
)	(Remaining General Provisions Unique to
)	Basin 34/Season of Use Provisions)
)	
_____)	

**AMENDED ORDER SETTING TRIAL DATE, FINAL PRE-TRIAL CONFERENCE,
DISCOVERY DEADLINES, AND PRE-TRIAL MOTIONS FOR BASIN-WIDE
ISSUES 5-34 (GENERAL PROVISIONS UNIQUE TO BASIN 34), INCLUDING
REMAINING ISSUE ON GENERAL PROVISION 5 “SEPARATE STREAMS” AND
OBJECTIONS TO IRRIGATION PERIOD OF USE PROVISION – I.R.C.P. 16**

I.

DESCRIPTIVE SUMMARY

This is a pre-trial and trial scheduling order for those issues regarding the general provisions previously designated as Basin-Wide Issue 5-34, including those issues previously determined by the Court to be of a global nature regarding the irrigation period of use. This order modifies the dates set forth in the scheduling order previously entered by the Court on June 13, 2000, and its subsequent modifications.

II.

PROCEDURAL BACKGROUND

1. On June 13, 2000, the Court entered an *Order Setting Trial Date, Final Pre-trial Conference, Discovery Deadlines, and Pre-trial Motions for Basin-Wide Issues 5-34 (General Provisions Unique to Basin 34) – I.R.C.P. 16*, subcase 91-00005-34 (June 13, 2000). The Order set forth in detail the procedural history of Basin-Wide Issue 5-34, which the Court herein incorporates by reference.

2. On June 19, 2000, as a result of settlement efforts, the parties participating in the objections to General Provision 5, also referred to as “separate streams,” filed a stipulation resolving all but one issue pertaining to the recommended General Provision. On June 23, 2000, the Court entered an order adopting the stipulation. The Court also entered an order amending the June 13, 2000, scheduling order to include the remaining unresolved issue pertaining to recommended General Provision 5. The remaining issue is whether water right 34-10635 also should be included in the General Provision. *See Amendment to Trial Scheduling Order – Basin-Wide Issue 5-34*, subcase 91-00005-34 (June 23, 2000).

3. On August 28, 2000, the Court entered an order consolidating for pre-trial, trial, and settlement conferences the “global” objections to the irrigation period of use provision and requesting an explanatory supplemental director’s report on the irrigation period of use provision. (Non-global objections to specific dates are before Special Master Bilyeu for resolution.) *See* explanation contained in *Order Setting Status Conference Regarding Objections to Beginning and Ending Dates of Irrigation Period of Use for Basin 34*, subcase 91-00005-34 (June 13, 2000) and *Order Consolidating Irrigation Period of Use Provision Issue With Basin-Wide Issues Unique to Basin 34; and Order Requesting Explanatory Supplemental Director’s Report (“706 Report”), I.R.E. 703, 705, 706, I.C. § 42-1412(4)* (Aug 28, 2000).

4. On September 11, 2000, the Supplemental Director’s Report regarding the period of use provisions was filed by IDWR in accordance with the Court’s August 28, 2000, Order.

5. On September 22, 2000, at the recommendation of Special Master Cushman who is acting as settlement facilitator, the Court entered an order staying the matter for all purposes until further order.

6. On December 15, 2000, the Honorable Roger S. Burdick replaced the Honorable Barry Wood as Presiding Judge of the SRBA.

7. A status and scheduling conference was held on January 16, 2001, for purposes of resuming the previously stayed pre-trial scheduling order. The matter is currently set for mandatory settlement conference to be held February 13, 2001.

III.

SCOPE OF PROCEEDINGS

The remaining issues subject to this scheduling order include the following:

General Provision 1 – “Definitions”

General Provision 2 – “2B Gage and stockwatering during irrigation season”

General Provision 3 – “Rotation with storage”

General Provision 4 – “Backchannel”

General Provision 6 – “Howell Gage – connected/unconnected”

Also included is the remaining issue pertaining to General Provision 5 “separate streams” for water right 34-10635 and the “global” objections to the recommended irrigation period of use provision.

IV.

FORMAT OF THE COURT TRIAL

As previously ordered, although all issues will be heard in the same continuous proceeding, the Court will segregate each general provision for purposes of conducting the trial. Evidence and legal argument will be taken in turn on one proposed general provision at a time. Once all evidence and legal argument has been taken on a general provision, the Court will proceed to the next provision. Parties should be prepared to present their cases accordingly.

V.

SETTLEMENT EFFORTS

The Court previously entered an order setting a mandatory settlement conference on February 13, 2001. That order remains in effect.

VI.

SCHEDULING ORDER

1. Date Requirements in this Order: For any date requirement indicated herein which falls on a Saturday, Sunday, or court holiday, the due date shall be the next day which is not a Saturday, Sunday, or court holiday. I.R.C.P. 6(a).

2. Trial Date: IT IS ORDERED that a trial in the above-captioned subcase shall commence on **Monday, May 14, 2001, at 9 a.m. at the Snake River Basin Adjudication Court, 253 – 3rd Avenue North, Twin Falls, Idaho**, and continue each business day thereafter until completed.

3. Final Pre-Trial Conference: Pursuant to I.R.C.P. 16(d):

IT IS ORDERED that a final pre-trial conference will be held on **Monday, April 23, 2001, at 1:30 p.m. at the Snake River Basin Adjudication Court, 253 – 3rd Avenue North, Twin Falls, Idaho**.

4. Pre-Trial Discovery Served/Discovery Completed:

4.1: Pre-Trial Discovery Served: IT IS HEREBY ORDERED that with the exception of the schedule for witness disclosure which is governed by item number 5 below and the taking of deposition testimony of certain IDWR personnel governed by item number 6 below, all discovery including but not limited to the taking of all depositions of all lay and expert witnesses, all interrogatories, requests for production/inspection and requests for admissions, **shall be served after February 9, 2001, and no later than 5:00 p.m., Friday, February 23, 2001.**¹

4.2: Discovery Completed: All discovery shall be completed **no later than 5:00 p.m., Friday, April 6, 2001**. By completed, it is meant that all depositions shall actually be taken, interrogatories answered and/or supplemented, requests for production/inspection completed, and requests for admissions answered.

Motions to compel shall be filed so as to accommodate the time requirements of this provision.

5. Witness Disclosure:

5.1: Lay Witnesses: IT IS ORDERED that disclosure of all lay witnesses, except lay impeachment witnesses, be completed between the parties no later than **5:00 p.m., Friday, February 23, 2001**. All non-disclosed lay witnesses, except impeachment

¹ Parties are reminded that IDWR is not a party to the SRBA and, therefore, may not be served with interrogatories as a means of discovery pursuant to I.R.C.P. 33(a).

witnesses, shall be excluded from testifying in the trial of the action unless permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(J).

5.2: Expert Witnesses: IT IS ORDERED that disclosure of all experts, except rebuttal experts, **shall be completed no later than 5:00 p.m., Friday, February 23, 2001.** Disclosure of any rebuttal experts (not experts for the case in chief) **shall be completed no later than 5:00 p.m., Friday, March 2, 2001.** All non-disclosed expert witnesses, except impeachment witnesses, shall be excluded from testifying in the trial of the action unless permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(J).

6. Deposition of Certain IDWR Personnel Prior to Settlement Conference: At the scheduling conference held on January 16, 2001, some parties expressed concern regarding the parties conducting discovery prior to the February 13, 2001, mandatory settlement conference. In an effort to balance the competing concerns raised, the Court ordered and does order the following:

IT IS ORDERED that only the depositions of Dave Tuthill, Carter Fritschle, and Ernie Carlson are allowed to be conducted prior to the February 13, 2001, settlement conference. To the extent that any of the three depositions are taken prior to February 13, 2001, then the depositions must be completed no later than 5 p.m. Friday, February 9, 2001. The taking of further depositions from those persons will be allowed only by a direct order of this Court.

7. Exhibits: Each party shall produce for examination by all other parties all exhibits, except impeachment exhibits, which will be offered into evidence at the trial **prior to the day set for the pre-trial conference.** I.R.C.P. Rule 16(e)(1).

IT IS HEREBY FURTHER ORDERED that a party shall not offer any exhibit(s) at the trial other than those listed in accordance with the above paragraphs, except when offered for impeachment purposes, or when otherwise permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(I). If any exhibits are discovered after the date set for pre-trial conference, disclosure to the Court and the opposing party shall be made immediately by

filing and service of such notice and exhibit, stating the date of the discovery. I.R.C.P. Rule 16(h).

IT IS HEREBY FURTHER ORDERED that all exhibits relevant to trial, except impeachment exhibits, shall be pre-marked prior to the day scheduled for the pre-trial conference. Arrangements for marking said exhibits **and for exhibit number assignments** can be made through the Deputy Clerk of the Court at 208-736-3011, 8:00 a.m. – 5:00 p.m., Monday through Friday, excluding holidays.

8. Pre-Trial Motions: IT IS ORDERED that all pre-trial motions, including motions for summary judgment and other dispositive motions, evidentiary issues and motions in limine **shall be filed and noticed for hearing prior to the final pre-trial conference and shall not be heard on the day of the final pre-trial conference.**

Pre-trial motions shall be supported and opposed by briefs citing the applicable law relevant to the issue being heard. Affidavits, if appropriate, may also be filed to support or oppose any motion if evidence is to be offered on a motion pursuant to I.R.C.P. 43(e). Adequate notice shall be provided to all parties and the Court so that sufficient time can be allotted for the hearing.

9. Post-Hearing Briefing: Following the evidentiary hearing, the Court will allow time to submit additional briefing at the request of the parties or if the Court concludes that additional briefing would be beneficial.

VII.
SUMMARY OF DEADLINES

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| 1. 5:00 p.m., Friday, February 23, 2001 | Pre-Trial Discovery Served |
| 2. 5:00 p.m., Friday, February 23, 2001 | Lay Witnesses Disclosed |
| 3. 5:00 p.m., Friday, February 23, 2001 | Expert Witnesses Disclosed |
| 4. 5:00 p.m., Friday, March 2, 2001 | Rebuttal Experts Disclosed |
| 5. 5:00 p.m., Friday, April 6, 2001 | All Discovery Completed |
| 6. Prior to Monday, April 23, 2001 | Exhibits Exchanged/Pre-Marked |
| 7. Prior to Monday, April 23, 2001 | Pre-Trial Motions Heard |
| 8. 1:30 p.m., Monday, April 23, 2001 | Final Pre-Trial Conference |
| 9. 9:00 a.m., Monday, May 14, 2001 | Trial Date |

IT IS SO ORDERED:

DATED: _____

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication