

**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)	
)	
Case No. 39576)	ORDER OF PARTIAL DECREE FOR
)	GENERAL PROVISIONS IN BASIN 65
)	
_____)	

On April 13, 2000, pursuant to Idaho Code § 42-1411(3), the Director of the Idaho Department of Water Resources filed a *Director's Report* recommending general provisions applicable to water rights in Basin 65. Each of these recommended general provisions is discussed below.

General Provision No. 1 (early and late season diversions)

General Provision No. 1 arises from the Payette River Adjudication, Gem County case No. 3667. In the Payette River Adjudication, the Director of the Idaho Department of Water Resources filed a report entitled *Proposed Findings of Water Rights in the Payette River Drainage Basin* (April 26, 1979). The recommended general provision appears on page 175 therein. On January 21, 1986, Judge Doolittle entered a ***Partial Decree Pursuant to Rule 54(b) I.R.C.P.***, thereby decreeing, with certain amendments, those portions of the *Proposed Findings* for which there were no unresolved objections. The Payette River Adjudication was consolidated into the SRBA by Order dated February 8, 2001.

No objections were filed in the SRBA to this recommended general provision. On August 23, 2000, pursuant to Idaho Code § 42-1412(7), the Court held a hearing on those portions of the *Director's Report* for which no objection was filed. The Court has reviewed this recommended general provision, as well as the files and records of the

Payette River Adjudication, and has reviewed applicable law, including *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), and concludes that there is a factual and legal basis for the recommended general provision, and that this general provision conforms with Idaho law. Further, the Court finds, based upon the *prima facie* nature of the *Director's Report* under Idaho Code § 42-1411(4), that General Provision No. 1 is necessary for the efficient administration of water rights in Basin 65.

General Provision No. 2 (Sevenmile Slough)

General Provision No. 2 also arises from the Payette River Adjudication. The recommended general provision appears on page 175 of the April 26, 1979 *Proposed Findings of Water Rights in the Payette River Drainage Basin*.

No objections were filed in the SRBA to this recommended general provision. On August 23, 2000, pursuant to Idaho Code § 42-1412(7), the Court held a hearing on those portions of the *Director's Report* for which no objection was filed. The Court has reviewed this recommended general provision, as well as the files and records of the Payette River Adjudication, and has reviewed applicable law, and concludes that there is a factual and legal basis for the recommended general provision, and that this general provision conforms with Idaho law. Further, the Court finds, based upon the *prima facie* nature of the *Director's Report* under Idaho Code § 42-1411(4), that General Provision No. 2 is necessary for the efficient administration of water rights in Basin 65.

General Provision No. 3 (Separate Streams)

General Provision No. 3 also arises from the Payette River Adjudication. The recommended general provision appears on page 174 of the April 26, 1979 *Proposed Findings of Water Rights in the Payette River Drainage Basin*.

The *Director's Report* filed in the SRBA for General Provision 3 included a list of water right numbers from sources tributary to the Payette River which were recommended to be administered separately from all other water rights in Basin 65. The United States of America, acting through the Department of the Interior, Bureau of Reclamation, filed an objection to the *Director's Report* for each of the water rights listed therein. Those objections have been resolved, with the concurrence of the Idaho

Department of Water Resources, by including the following language in the partial decree for each of the water rights:

Basin 65 General Provision No.3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such a change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

The Court has reviewed this recommended general provision, as well as the files and records of the Payette River Adjudication, and has reviewed applicable law, and concludes that there is a factual and legal basis for the recommended general provision, and that this general provision conforms with Idaho law. The Court finds, based upon the *prima facie* nature of the *Director's Report* under Idaho Code § 42-1411(4), and based upon the evidentiary value of IDWR's concurrence in the resolution of the objections filed by the United States, that General Provision No. 3 is necessary for the efficient administration of water rights in Basin 65.

General Provision No. 4 (Conjunctive Management)

On February 27, 2002, Judge Burdick issued a *Memorandum Decision and Order of Partial Decree* in Basin Wide Issue 5 (Connected Sources General Provision), subcase 91-00005. Therein, Judge Burdick decreed the form of the conjunctive management general provision to be used in each administrative basin within the Snake River Basin Adjudication. Basin 65 General Provision No. 4 has been modified from what was recommended in the *Director's Report* to conform with the *Order* issued in Basin Wide Issue 5.

In accordance with the foregoing, IT IS ORDERED that the Basin 65 general provisions are hereby **decreed** as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b)* entered contemporaneously herewith.

Dated _____

PROPOSED

JOHN MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF PARTIAL DECREE FOR GENERAL PROVISIONS IN BASIN 65 was mailed on _____ with sufficient first-class postage to the following:

Director of IDWR
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