

**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)	91-00005-34
)	
)	ORDER SETTING SCHEDULING
)	CONFERENCE FOR REMANDED BASIN-
Case No. 39576)	WIDE ISSUE 5-34 AS REDESIGNATED
)	(GENERAL PROVISIONS IN BASIN 34);
<hr style="width: 100%;"/>)	DEADLINE FOR NOTICE OF INTENT TO
)	PARTICIPATE

**I.
PROCEDURAL HISTORY
BASIN-WIDE ISSUES IN BASIN 34**

General Provisions relating to Reporting Area 1, Basin 34, were previously contained in both Basin-Wide Issue 5 and 5B. On remand from the Idaho Supreme Court from these two designated basin-wide decisions,¹ the SRBA District Court has realigned all remaining general provision issues relating to Basin 34 and designated them as Basin-Wide Issue 5-34. *SRBA Administrative Order 1, § 11; Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AO1, § 11* (Aug. 31, 1999.) (All remaining general provisions relating to Basin 36 have been realigned as Basin-Wide Issue 5-36, and all remaining general provisions relating to Basin 57 have been realigned as Basin-Wide Issue 5-57.) As explained in the *Order of Consolidation/Separation*, the purpose of the

¹ *A & B Irrigation v. Idaho Conservation*, 131 Idaho 411, 958 P.2d 568 (1998); *State v. Nelson*, 131 Idaho 12, 951 P.2d 943 (1998)

realignment and redesignation of issues by hydrologic basin is based upon directions from the Idaho Supreme Court that each of the remaining proposed general provisions in the respective basins are separate and distinct and each must be discretely considered. Therefore, the SRBA Court must hold separate evidentiary hearings for each of the basins on the remaining proposed general provisions.

II. THE ISSUES IN NEWLY REALIGNED 5-34

The four issues now constituting Basin-Wide Issue 5-34 (Basin 34) are:

- Conjunctive administration within Basin 34
- Beginning and ending dates of the irrigation period of use
- Administration of surface sources
- Storage

III. SUPPLEMENTAL DIRECTOR'S REPORT

After remand, Judge Daniel C. Hurlbutt, Jr., ordered IDWR to file supplemental director's reports with updated recommendations on general provisions for Basin 34. On June 24, 1999, IDWR filed its *Supplemental Director's Report, Reporting Area 1 IDWR Basin 34, Regarding Revision of the Following: Period of Use (for Irrigation Water Uses), Conjunctive Management General Provisions* which set forth IDWR's recommendations on general provisions for Basin 34 and established the deadline for Objections to general provisions as July 30, 1999.

**IV.
DIAGRAM OF “ORIGINAL” PROPOSED GENERAL PROVISIONS
TO “REVISED” PROPOSED GENERAL PROVISIONS**

It appears to the Court that the form, content and numbering of the proposed general provisions in Basin 34 as reported in the Supplemental Director’s Report has changed from the original Director’s Report. The following diagram/chart is offered for clarity.

Original General Provision Number and Subject -- 1995	Basinwide Issue No. and Status	IDWR’s Most Recent Action -- 1999
General Provision No. 1 Definitions	Not designated	Supplemental Report General Provision 1
General Provision No. 2 Administration of Surface Sources: a. Division of Big Lost River b. Separate Streams c. Back Channel	Basin-Wide 5b Remanded	Supplemental Report General Provisions a. General Provision 5 b. General Provision 5 c. General Provisions 1.d and 4
General Provision No. 3 Conjunctive Administration within Basin 34	Basin-Wide 5 Remanded	Supplemental Report General Provision 7
General Provision No. 4 Storage a. Flow below Mackay Dam b. Rotation into storage	Basin-Wide 5b Remanded	Supplemental Report General Provisions a. General Provision 2 b. General Provisions 1.c and 3
General Provision No. 5 Firefighting Purposes	Basin-Wide 5 Accepted	None (will simply be decreed)
General Provision No. 6 Irrigation Use a. Incidental stock water b. Early and Late Irrigation c. Excess Flows	Basin-Wide 5 Struck Remanded Struck	Supplemental Report a. No General Provision now proposed b. Individual recommendations for specific rights/no General Provision now proposed c. No General Provision now proposed

V.
OBJECTIONS TO GENERAL PROVISIONS
PROPOSED IN SUPPLEMENTAL DIRECTOR'S REPORT (1999)

Matea and John McCray, Roy Crawford, Mountain Springs Ranch LLC, Simmons Trust, G. David and Heather M. Nelson, Reva Walker, Charles Burgess, Larman Andersen, and Granite Trust Organization all filed Objections to the General Provisions for Basin 34 recommended by IDWR. Every numbered General Provision 1 through 7 was objected to, and the objections raised questions about the general provisions which could materially affect a large number of parties to the adjudication and shall, therefore, proceed as part of the remanded Basin-Wide Issue 5-34 as it is now designated.

VI.
CERTIFICATE OF MAILING FOR BASIN-WIDE ISSUE 5B
AND NOTICE OF INTENT TO PARTICIPATE

Because it appears that the form and content of the general provisions as reported in the *Supplemental Director's Report* has changed from the original Director's Report, to satisfy due process, this Scheduling Order shall be sent to all water right claimants in Basin 34.

A separate certificate of mailing is created for each basin-wide issue and consists of the parties who filed the motion to designate or a response thereto, a response to the notice of intent, or a brief in response to the order designating. Parties to the SRBA may also become parties to basin-wide issues by filing *Notices of Intent to Participate*. *AOI* § 16.b.

IT IS ORDERED THAT the objections filed by Matea and John McCray, Roy Crawford, Mountain Springs Ranch LLC., Simmons Trust, G. David and Heather M. Nelson, Reva Walker, Charles Burgess, Larman Andersen, and Granite Trust Organization satisfy the requirements of *AOI*, and those parties shall be included on the certificate of mailing for Basin-Wide Issue 5-34. All parties who participated in the proceedings on the original Basin-Wide Issue 5B before the SRBA District Court and/or the Idaho Supreme Court shall be included in the certificate of mailing for all remaining proposed general provisions for Basin 34. All other parties must file a *Notice of Intent to Participate* no later than **September 30, 1999**.

**IV.
SCHEDULING CONFERENCE**

IT IS ORDERED that a Scheduling Conference shall be held to determine a briefing and hearing schedule for realigned Basin-Wide Issue 5-34. The Scheduling Conference shall be held:

**October 20, 1999 9:30 am Butte County Courthouse
326 East Grand
Arco, Idaho**

DATED August _____, 1999.

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that true and correct copies of the **ORDER SETTING SCHEDULING CONFERENCE FOR BASIN-WIDE ISSUE 5B** were mailed on August 31, 1999, by first-class mail to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Court Certificate of Mailing for Expedited Hearings

Court Certificate of Mailing for Basin-Wide Issue 5-34 (5B)

All claimants to water rights in Basin 34

Deputy Clerk