

**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)	
)	(Irrigation Period of Use
)	Provision Basin 34)
_____)	

**ORDER SETTING STATUS CONFERENCE REGARDING OBJECTIONS TO
BEGINNING AND ENDING DATES OF IRRIGATION PERIOD OF USE FOR
BASIN 34**

**I.
DESCRIPTIVE SUMMARY**

This is a notice of hearing for a status conference to be held on the irrigation period of use provisions for Basin 34. Early and late season irrigation period of use was previously recommended by IDWR as a general provision. In accordance therewith, the Court included irrigation period of use among those issues designated as Basin-Wide Issue 5 (subsequently redesignated as Basin-Wide Issues 5-34). Following remand in *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 558 P.2d 568 (1998), IDWR issued its *Supplemental Director’s Report* in which IDWR changed its irrigation period of use recommendations to be specific to each water right rather than in the format of a general provision. Some of the objections to the current irrigation period of use provisions in the Director’s Report appear to be “global” in nature rather than specific to an individual water right. This *Order* explains the procedural treatment of the irrigation period of use in Basin 34 and sets a status conference for the purpose of determining which remaining objections relate to individual water rights and which objections are more “global” in nature.

Following the status conference, it is the intent of the Court to retain and hear those objections of a “global” character by consolidating those issues with the trial schedule set in Basin-Wide Issues 5-34 (remaining general provisions unique to Basin 34). The irrigation period of use provisions pertaining to individual water rights probably will be referred to a special master for determination.

II.

PROCEDURAL BACKGROUND

1. On January 18, 1996, Judge Hurlbutt, then Presiding Judge of the SRBA, issued an *Amended Order Designating Basin-Wide Issue No. 5*. With respect to Basin 34, the Order stated the issue as: “Whether the general provisions in the *Amended Director’s Report for Reporting Area 1 (Basin 34)* as listed on Attachment B are necessary for the definition of the rights or for the efficient administration of the water rights.” Attachment B included a general provision (number 6(b)) which provided for early and late season irrigation.

2. On April 26, 1996, Judge Hurlbutt issued a *Memorandum Decision and Order Re: Basin-Wide Issue 5*, holding that the proposed general provision for early and late season irrigation is not necessary. Judge Hurlbutt reasoned that decrees entered in the SRBA need only to set the period of use as the “irrigation season” rather than fixed dates. Therefore, a general provision for early and late season irrigation was unnecessary.

3. Judge Hurlbutt’s decision was appealed to the Idaho Supreme Court, which reversed and concluded that fixed irrigation period of use dates were required in SRBA decrees. The Supreme Court remanded the case to the SRBA court for a factual determination of those fixed dates, and for a determination of whether a general provision for early and late season irrigation was necessary in light of the need for fixed dates for the irrigation period. *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 558 P.2d 568 (1998).

4. On December 9, 1998, after the Idaho Supreme Court remanded the season of use issue, Judge Hurlbutt issued an *Order Requesting Supplemental Director’s Reports from Idaho Department of Water Resources for Irrigation Season and Conjunctive Management General Provisions in Reporting Areas 1, 2 and 3*.

5. On June 24, 1999, IDWR filed its *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revisions of the Following: Period of Use (for Irrigation Water Uses), Conjunctive Management General Provisions (Supplemental Director's Report)*. This *Supplemental Director's Report* recommended irrigation period of use dates for each irrigation water right in Basin 34. Absent from this report was the previously proposed general provision regarding early and late season irrigation. The deadline for objections to the *Supplemental Director's Report* was July 30, 1999.

6. On August 31, 1999, December 3, 1999, and December 20, 1999, this Court entered three orders setting forth the procedural history and this Court's posture for resolving those general provisions previously designated as Basin-Wide Issues following the Idaho Supreme Court's remand in *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 558 P.2d 568 (1998) and *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998). For a detailed discussion, see ***Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AOI § 11*** (August 31, 1999); ***Amended Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AOI § 11*** (December 3, 1999); ***Second Amended Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B; AOI § 11*** (December 20, 1999). In the August 31, 1999, ***Order***, this Court realigned and redesignated the issues by individual basin (i.e. Basin 34, 36, and 57), with "irrigation period of use" being one of the issues contained in Basin-Wide Issues 5-34. Subsequently, in the December 3, 1999, and December 20, 1999, ***Orders***, the issue of Conjunctive Management was separated from Basin-Wide Issues 5-34 and redesignated as Basin-Wide Issue 5.

7. On November 10, 1999, this Court issued an ***Order Setting Deadline for Filing More Definite Statement and Setting Status Conference***, giving the parties to Basin-Wide Issues 5-34 until December 20, 1999, to file a more definite statement regarding their objections/responses to the general provisions and period of use issues encompassed within Basin-Wide Issues 5-34.

8. Following the December 20, 1999, deadline, this Court received several statements. Some, but not all of these statements addressed the "period of use" issue.

See e.g. *More Definite Statement Concerning Basin 34 General Provisions*, filed by Patrick Brown on behalf of G. David and Heather Nelson, and Mountain Springs Ranch, L.L.C.

III. DISCUSSION

In *A & B Irrigation District v. Idaho Conservation League*, the Idaho Supreme Court held that specific beginning and ending dates must be determined for each irrigation water right. Accordingly, the Supreme Court remanded to this Court to: 1) resolve the factual questions regarding the appropriate period of use for each water right, and; 2) determine whether IDWR's proposed general provision regarding "early and late season periods of use for irrigation" is necessary to define or efficiently administer irrigation water rights.

Subsequent to the decision in *A & B Irrigation District*, IDWR filed its *Supplemental Director's Report* (June 24, 1999), which made a specific recommendation as to the beginning and ending dates for each irrigation water right. Additionally, this *Supplemental Director's Report* contained a modified set of proposed general provisions for Basin 34. Absent from these proposed general provisions was any general provision regarding early and late season irrigation. However, some of the irrigation water rights recommended in the *Supplemental Director's Report* contain a remark which states:

The period of use for irrigation described above may be extended in seasons of unusual characteristics to a beginning date of [date] and an ending date of [date] at the discretion of the watermaster for water district 34.¹

Other irrigation water rights recommended in the *Supplemental Director's Report* contains a remark which states:

The use of water for irrigation under this right may begin as early as [date], provided other elements of the right are not exceeded. The use of water before [date] under this remark is subordinate to all water rights

¹ It should be noted that on May 25, 2000, this Court issued an *Order on Court's Motion to Correct Clerical Error Contained in Season of Use Provision; I.R.C.P. 60(a)*, which corrected a clerical error in the *Supplemental Director's Report*, so that the recommended language now reads: "The period of use for irrigation described above may be extended in seasons of unusual characteristics to a beginning date of [date] and an ending date of [date] at the discretion of the director."

having no subordinated early irrigation use and a priority date earlier than the date a partial decree is entered for this right.

Still other irrigation water rights recommended in the *Supplemental Director's Report* simply have beginning and ending dates, with no other remark such as those quoted above.

From this procedural history, it appears to this Court that the “irrigation period of use” component in Basin-Wide Issues 5-34 now has a rather peculiar procedural posture in that it is part of a basin-wide issue on remand, but it no longer involves a general provision. Furthermore, some of the objections filed to the season of use recommendations contained in the *Supplemental Director's Report* appear to be specifically addressed to the beginning and ending dates for particular water rights, while others appear to be more “global” objections which are addressed to all water rights containing a remark regarding expanded periods of use.

Based on the nature and content of some of the objections, coupled with the fact that the early and late season issue was initially intended to be resolved collectively as a basin-wide issue, it is not readily apparent which objections are intended to apply only to certain water rights and which objections are intended to apply to all irrigation rights within Basin 34. Therefore, clarification regarding the intended scope of the objections will ultimately assist the Court with determining how to proceed. In an effort to adjudicate the various objections in the most efficient and expeditious manner, it would be productive for the Court to conduct an initial status conference and hearing for the purposes of clarifying the nature of the objections and determining whether certain common objections can be realigned for consolidation and also determining which individual issues may require recommitment to a special master for further findings.

IV.

ORDER SETTING STATUS CONFERENCE

Therefore, for the reasons set forth above, IT IS HEREBY ORDERED; that a status conference is set on the irrigation period of use issues contained in Basin-Wide Issues 5-34, for the purpose of determining which objections may be realigned, consolidated and resolved in the District Court, and which objections may need to be

referred to a special master for further proceedings on those issues unique to a particular water right claim. Parties should be prepared to discuss these issues. The status conference is set for **Tuesday, August 22, 2000, at 1:30 p.m. at the Memorial Building, 326 West Grand, Arco, Idaho.**

IT IS SO ORDERED:

DATED: Tuesday, June 13, 2000.

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