

PROCEDURES IN THE SRBA

1. SCOPE AND PURPOSE

- a. The litigation of the SRBA will be governed by the Idaho Rules of Civil Procedure (I.R.C.P.), Idaho Rules of Evidence (I.R.E.) and the Idaho Appellate Rules (I.A.R.).
- b. These procedures supplement the I.R.C.P., I.R.E., I.A.R. and any other applicable laws or orders of this court only to the extent necessary to allow for the fair and expeditious resolution of all claims or issues in the SRBA.
- c. Provisions setting forth the manner of service and notice are adopted under the authority granted by *Supplemental Order Granting Additional Powers to District Judge*, Idaho S.Ct. 99143 (February 20, 1988).

2. DEFINITIONS

- a. **Abstract** - The abstract of each notice of claim or negotiated agreement for water rights under federal law.
- b. **AO1** - SRBA Administrative Order 1, Rules of Procedure.
- c. **Basin-Wide Issue** - An issue designated by the Presiding Judge as potentially affecting the interests of a large number of claimants to the use of water within the SRBA and the resolution of which will promote judicial economy.
- d. **Claimant** - Any person who has filed a claim to the use of water in the SRBA.
- e. **Clerk of the Court** - The Clerk of the SRBA Court.
- f. **Court** - The SRBA Court located at 253 Third Avenue North, Twin Falls, Idaho 83301. Mailing address PO Box 2707, Twin Falls, ID 83303-2707; Telephone (208) 736-3011; FAX (208) 736-2121; Internet www.srba.idaho.gov
- g. **Director** - The Director of the Idaho Department of Water Resources.
- h. **Docket Sheet Procedure** - The procedure established to give notice of proceedings on nonsubcase matters to SRBA claimants and parties.
- i. **Domestic Use** - Domestic water use is defined by I.C. §§ 42-111 and 42-1401A(4).
- j. **Error Correction Procedure** - The procedure established to correct errors in a Director's Report prior to the filing of that Director's Report with the court.
- k. **IDWR** - The Idaho Department of Water Resources.

- l. **Initial Hearing** - The first hearing before the court in a Class One Subcase.
- m. **IWATRS** - The court's automated registry of actions that lists all pleadings and documents filed or lodged with the court, all orders entered by the Presiding Judge or Special Masters, and that provides additional information such as lists of upcoming hearings.
- n. **Objector/Respondent** - Unless the context indicates otherwise, a party to the adjudication filing an objection or response to a water right recommendation reported in a Director's Report as provided by I.C. §§ 42-1411 and 42-1412 or claimed under federal law as provided by I.C. § 42-1411A.
- o. **Partial Decree/Judgment** - The final determination of the elements of a water right.
- p. **Party to a Subcase** - The claimant, any objector or respondent to a water right recommendation, any party to a subcase which has been consolidated with another subcase, any party to the adjudication granted leave to participate in a subcase by the Presiding Judge or a Special Master, and any party to the adjudication filing a *Motion to Alter or Amend* the **Special Master's Recommendation**.
- q. **Party to the Adjudication** - Any claimant as defined in I.C. §§ 42-1401A(1) and (6).
- r. **Pleadings** - All documents defined as pleadings by the I.R.C.P., objections, responses to objections, and notices of claims.
- s. **Pro Se** - Claimants representing themselves without legal counsel.
- t. **Recommendation** - The statements by the Director, as set out in a Director's Report, as to elements of a water right claim.
- u. **Special Master** - A person appointed by the Presiding Judge through an **Order of Reference** to hear subcases or other matters and who reports to the Presiding Judge.
- v. **Special Master's Recommendation** - A final written submission to the Presiding Judge containing the decisions and recommendations of the Special Master under the **Order of Reference**.
- w. **SRBA** - The Snake River Basin Adjudication.
- x. **Stock Watering Use** - Stock watering use as defined by I.C. § 42-1401A(11).

y. **Subcase** - A water right which is the subject of any post-Director's Report pleading.

- (1) **Class One Subcase** - Subcases where the difference between the Director's Report and the claim is less than 40 acres and/or the difference in quantity is less than 0.80 cfs and all claims where the objection relates only to owner identification, priority date, source or point of diversion.
- (2) **Class Two Subcase** - Subcases not included in the definition of Class One Subcase.

NOTE: The purpose of separating subcases into two classifications is to expedite the SRBA and provide claimants a speedy and cost-effective method to litigate cases where the difference between the Director's Report and the claim is less significant, as in the Class One Subcases. This allows the court, the parties and IDWR to focus more time and resources on resolving the more significant issues associated with Class Two subcases.

3. PLEADINGS

- a. All pleadings shall comply with the I.R.C.P. and these *Rules of Procedure*.
- b. Documents or pleadings filed in any courthouse other than the SRBA Courthouse will not be accepted and will not be deemed "filed" until received by the Clerk of the SRBA Court.
- c. Pleadings shall be signed by counsel as required by I.R.C.P 11(a)(1) or by *pro se* claimants.
- d. **Caption** - The following caption shall be used on all pleadings in the SRBA and must begin 2 inches from the top of the page. Pleadings filed in the individual subcases shall include the subcase (water right) number inserted above the document name. Pleadings filed in the basin-wide issues shall include the basin-wide issue number inserted above the document name

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for court file stamp

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Name of Party Filing Document:
Attorney Name & Address

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 NUMBER)
)	
Case No. 39576)	(DOCUMENT NAME)
)	

(Begin Document Text Here)

- e. The document name shall identify the specific type of document and the action or relief requested.
- f. All documents or pleadings shall include the name of the document typed at the bottom of each page, including all attachments or exhibits, pursuant to I.A.R. 28(E).
- g. All attached exhibits must be legible and subject to reproduction or must be accompanied by a typewritten duplicate. All handwritten exhibits shall be accompanied by a typewritten duplicate. I.R.C.P. 10(a)(1)
- h. **Filing By FAX** - Documents and pleadings may be filed by FAX pursuant to I.R.C.P. 5(e)(2):
 - (1) FAX filings are only accepted for filing during the normal working hours of the Clerk of the SRBA Court: 8:30 a.m. to 5 p.m., Monday through Friday. Any FAX transmission not **completed** by 5 p.m. will be file stamped the next business day.
 - (2) Documents or pleadings filed by FAX are limited to 10 pages, **including** attachments and exhibits.

- (3) The signature on the FAXed copy shall constitute the required signature under I.R.C.P 11(a)(1). It is not necessary to send the original by mail.
 - (4) Except for Standard Form 5, SRBA Standard Forms **will not** be accepted for filing by FAX.
 - (5) The Clerk of the SRBA Court shall accept for filing a copy of any FAXed document or pleading not transmitted directly to the court. The signature on the FAXed copy shall constitute the required signature under I.R.C.P. 11(a)(1) and there is no limit to the number of pages filed. I.R.C.P. 5(e)(3)
- i. **Injunctive Relief** - Any action for injunctive relief brought pursuant to I.R.C.P. 65 or I.R.C.P. 74 shall be heard by the Presiding Judge or the Special Master who, by *Order of Reference*, has been assigned the subcase(s) affected by the motion. The Presiding Judge, or a Special Master if assigned, will hear actions for injunctive relief in the SRBA generally or relating to uncontested recommendations.
- On receipt of any motion or petition for injunctive relief, the Clerk of the Court shall assign a separate subcase file to the matter. This new subcase file number shall be included on all documents filed regarding the injunctive relief matter.
- Injunctive relief matters will be handled on an expedited basis and will be reported in the Docket Sheet.
- j. **Multiple Subcases** - When filing a pleading affecting multiple subcases, the filing party shall provide the court a copy of the pleading for each subcase affected. If the pleading is filed by FAX, the copies shall be mailed to the court the same day. When subcases are consolidated by court order and a lead subcase is designated, only one pleading needs to be filed in the lead subcase; however, service is still required on all parties in each subcase.
- k. **IDWR Central Depositories** - IDWR shall maintain copies of all pleadings and other documents filed or lodged in the SRBA and which appear on the Docket Sheet. Copies shall be available for inspection and copying during normal business hours at its central office located at 322 E. Front Street, 6th Floor, Boise, Idaho. The mailing address is: IDWR Document Depository, PO Box 83720, Boise, Idaho 83720-0098; telephone (800) 451-4129; FAX (208) 287-6701.

1. **IDWR Regional Depositories** - IDWR's regional offices shall maintain copies of objections, responses and supporting documents, if any, for all water rights reported in that region. These pleadings and IDWR's investigative files for reported water rights shall be available for inspection and copying during normal business hours. IDWR claim files for Reporting Area 22, Clearwater River Drainage, are maintained at IDWR's central office.

4. STANDARD PLEADING FORMS

- a. Parties must use the following standard forms:
 - (1) *Objection* (Standard Form 1)
 - (2) *Response to Objection* (Standard Form 2)
 - (3) *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim* (Standard Form 4)
 - (4) *Stipulated Elements of a Water Right* (Standard Form 5)
- b. The standard forms may be obtained from IDWR or the SRBA Court. A copy of each standard form is attached to these rules.
- c. A party may copy or reproduce any standard form. The form may be electronically modified to include only those sections being used. No other portion of the forms may be modified unless ordered by the court. The court will not accept incorrect or incomplete forms. Refiling of returned incorrect or incomplete forms must be made under the original filing deadline or pursuant to a motion and order for a late filing.
- d. Use of standard forms:
 - (1) *Objection* (Standard Form 1) and *Response to Objection* (Standard Form 2) -
 - (a) Objections and responses to a recommendation or abstract in a Director's Report shall be on SRBA Standard Forms 1 and 2. No other form of objection or response may be filed with the court.
 - (b) A claimant **may not** amend a claim by filing an objection or a response (see Section 4d(2)).
 - (c) The Director shall notify claimants that the court requires the use of standard objection or response forms. This notice may be included in the *Notice of Filing the Director's Report*.

- (d) **Deadlines for Filing an Objection or a Response Form** - The *Notice of Filing the Director's Report*, filed by IDWR, shall set out the dates when objections and responses are due and shall be computed to include weekends and holidays. The objection or response must be **received** by the court by the deadline specified.
 - (e) Any party filing 25 or more objections or responses must make an appointment with the Clerk of the SRBA Court at least 14 days prior to the deadline for filing their pleadings.
 - (f) **Service of an Objection or a Response Form** - A party filing an objection or a response must send the original with supporting documents, if any, to the Clerk of the SRBA Court and a copy, including supporting documents, to each individual identified on that form's certificate of mailing.
- (2) *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim* (Standard Form 4) -
- (a) In reporting areas where a Director's Report **has not** been filed, a late notice of claim or an amended notice of claim shall be filed with IDWR. A *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim* with the court is not required.
 - (b) In reporting areas where a Director's Report **has** been filed, a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim* must be filed with the court.
 - (c) A *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim* must be filed using Standard Form 4 and must be used for a single water right only.
 - (d) A *Motion to File a Late Notice of Claim* shall proceed before the Presiding Judge and shall follow the Docket Sheet Procedure (Section 6) and will be reviewed under the criteria of I.R.C.P. 55(c).
 - (e) A *Motion to File an Amended Notice of Claim* shall proceed before the Presiding Judge or the Special Master assigned to the subcase and will be reviewed under the criteria of I.R.C.P. 55(c).
 - (f) A *Motion to File a Late Notice of Claim* shall have attached:
 - 1) A completed Notice of Claim (available from IDWR) and
 - 2) The claim filing fee and late claim fee for claims other than a domestic or stock watering use for which a notice of claim was not filed. Payment shall

be in the form of a check made payable to: State of Idaho Department of Water Resources. To determine the exact amount of these fees, call IDWR at (800) 451-4129.

- (g) When a *Motion to File a Late Notice of Claim* is granted, the Clerk of the Court shall forward the check and completed Notice of Claim to IDWR. If the motion is denied, the Clerk of the Court shall return the claim filing fee and the late claim fee.
- (h) IDWR shall file a Director's Report for all late-filed claims within 60 days following the granting of the *Motion to File a Late Notice of Claim*.
- (i) Notice of the filing of the Director's Report for a late claim shall be reported in the Docket Sheet.
- (j) Objections or responses to Director's Reports for late claims must be received by the court as follows:
 - 1) Objections must be filed within 21 days from the appearance of the filing of the Director's Report in the Docket Sheet.
 - 2) Responses must be filed within 14 days following the close of the objection period.
- (k) Leave to amend a notice of claim shall be freely given when justice so requires.
- (l) The Presiding Judge or Special Master shall determine how to proceed when an amendment is granted and whether a supplemental Director's Report is required.
- (m) Pursuant to I.C. §§ 42-1414 and 42-1415, additional costs may apply to late notices of claim or to amended notices of claim other than for domestic and stock watering rights.

(3) *Stipulated Elements of a Water Right* (Standard Form 5) -

Where parties reach an agreement on a contested water right recommendation, they shall file either a stipulation with the court using Standard Form 5 or some other stipulation acceptable to the court. Subcases may also be resolved orally on the record.

- (a) Standard Form 5 may only be used if **all** parties have stipulated to **all** elements of **one** water right and may be submitted at any time following the close of the statutory response period.
- (b) Standard Form 5 is used to report the stipulated elements of **one** water right acquired under state law or **one** federal reserved water right.

- (c) When IDWR does not concur with a proposed settlement, the Presiding Judge or Special Master shall conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right as stipulated in the Standard Form 5 or proposed settlement.

5. EVIDENCE AND DOCUMENT PRESERVATION

- a. After a Director's Report has been filed, employees or contractors of IDWR may go on a claimant's property in that reporting area to further investigate a reported claim only with permission from the claimant or leave of the SRBA Court.
- b. No party to the SRBA may destroy any document or evidence kept in any medium which relates to a pending claim in the SRBA or has been prepared for use in the SRBA, except on motion and order by the SRBA Court. This order is intended to override any records management or document destruction program used by any party. This order does not apply to documents protected by the attorney-client privilege or to attorney work product.
- c. IDWR may not destroy any document or evidence, in any medium, relating to a water right or which has been used or relied upon in making a recommendation in a Director's Report. Further, IDWR shall keep all policies and procedures, past or current, in draft or final form, which were actually relied upon by IDWR, its employees or agents in making any recommendation in a Director's Report.

6. DOCKET SHEET PROCEDURE

- a. The Docket Sheet Procedure shall be used to give notice to parties in the adjudication about matters not a part of a subcase and shall be used when required by these *Rules of Procedure*.
- b. The Docket Sheet shall include the following sections:
 - (1) A chronological list of all orders, pleadings (except objections, responses, pleadings or orders filed in subcases) and other documents (i.e., motions for late or amended claims or motions for late objections) filed with the court since the last docket sheet including:
 - (a) The SRBA case number;
 - (b) The document name;
 - (c) The name of the party and the party's attorney, if any; and
 - (d) The date the document was filed.
 - (2) A chronological list of all objections and responses filed since the last Docket Sheet including:
 - (a) The subcase number;
 - (b) The name of the claimant, objector or respondent;
 - (c) The address of the objector or respondent if not represented by an attorney;
 - (d) The name and address of the attorney representing the objector or respondent;
 - (e) The box number(s) checked on the objection or response form;
 - (f) The date the document was filed; and
 - (g) The source of the water right as stated in the Director's Report.
 - (3) A chronological list of the hearings scheduled for the next three months (except hearings in subcases) including:
 - (a) The SRBA case number;
 - (b) The date and time of the hearing;
 - (c) The subject; and
 - (d) The names of the parties.
 - (4) A list of all Special Master's Reports and Recommendations since the last Docket Sheet;
 - (5) A list of all Amended Director's Reports; and
 - (6) A list of all Partial Decrees issued since the last Docket Sheet.

- c. The SRBA Court shall compile the Docket Sheet and send copies to:
- (1) The Clerk of the District Court in each county located within the boundaries of the SRBA. The Docket Sheet shall be posted by the Clerk of the District Court in each county or the clerk shall post a notice telling where in the county building the Docket Sheet is available for inspection.
 - (2) One copy to IDWR for inclusion in the document depository:

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

IDWR shall make the Docket Sheet available for inspection at its central and regional offices.
- d. The court charges an annual subscription fee based on the actual cost of copying and mailing. The court shall maintain a Docket Sheet mailing list.
- e. Service of pleadings and other documents under the Docket Sheet Procedure.
- (1) The original of any pleading or other document shall be filed with the Clerk of the SRBA Court, 253 Third Avenue North, PO Box 2707, Twin Falls, Idaho 83303-2707.
 - (2) Copies of any pleading or other document shall be delivered or mailed to:
 - (a) IDWR Document Depository, PO Box 83720, Boise, Idaho 83720-0098;
 - (b) Chief, Natural Resources Division, Office of the Attorney General, State of Idaho, PO Box 44449, Boise, Idaho 83711-4449;
 - (c) The United States Department of Justice, Environment and Natural Resources Division, 550 West Fort Street, MSC 033, Boise, Idaho 83724. Documents served by messenger or overnight delivery service should be sent to the U.S. Department of Justice, Environment and Natural Resources Division, 161 East Mallard Drive, Suite A, Boise, Idaho 83706, Tel: (208)331-5909; and
 - (d) All parties identified in the pleading from whom relief is sought. If relief is sought against a class or group, service shall be made on the representative of that class or group.

- f. Motion practice under the Docket Sheet Procedure.
- (1) **Hearing Date** - Unless otherwise ordered, a motion will be heard on the third Tuesday of the second month following its appearance on the Docket Sheet. Any motion filed with the court before 5 p.m. of the last working day of a month will be placed on the Docket Sheet for that month. (For example, a document filed before 5 p.m. on September 30, 1997 will appear on the Docket Sheet on October 7. The hearing will be held on Tuesday, December 16, 1997.)
 - (2) **Expedited Hearings** - Any party moving for an order to expedite a hearing shall send a copy of the motion and supporting documents to all parties listed in Section 6e(2) and each person on the current copy of the *Court Certificate of Mailing for Expedited Hearings* which is available from the Clerk of the SRBA Court.
 - (3) Notice of hearings under the Docket Sheet Procedure:
 - (a) Service of a notice of hearing shall be made pursuant to Section 6e(2). A party requesting and receiving an expedited hearing shall meet the service requirements of Section 6f(2).
 - (b) Compliance with the Docket Sheet Procedure constitutes notice to all parties to the adjudication.
 - (4) Briefing schedule under the Docket Sheet Procedure.
 - (a) **Documents in Support of a Motion** - All documents and briefs in support of a motion shall be filed with the motion and served on the parties listed in Sections 6e(2) or 6f(2).
 - (b) **Responses to Motions** - Parties may file documents and briefs supporting or opposing a motion by the fifteenth day of the month following the motion's first appearance on the Docket Sheet. Service shall be made on the movant and the parties identified in Sections 6e(2) or 6f(2). If a motion is to be heard on an expedited basis, a response shall be filed with the court at least one day prior to hearing and served on the *Court Certificate of Mailing for Expedited Hearings*.
 - (c) **Replies to Responses** - Documents or briefs in reply to responses must be filed before the last working day of the month following the motion's first appearance on the Docket Sheet, unless the matter is set on an expedited basis. Service shall be made on the party who filed the response and on the parties identified in Sections 6e(2) or 6f(2). A matter set on an expedited basis will rarely allow time for a reply to be filed prior to hearing.
 - (d) **Extensions** - For good cause a party may move for an extension of time to file a response or reply to a motion. A *Motion for Extension of Time* shall be filed with the court and served as provided in Sections 6e(2) or 6f(2), prior to the date the

brief is due. If the motion is granted, the movant shall serve a copy of the order as provided in Sections 6e(2) or 6f(2).

7. COURT FEES

The following fees apply in the SRBA. You must contact the Clerk of the SRBA Court for the amount of the fee.

- a. **Transcript fee** - A per-page fee is charged for the preparation of any transcript of any SRBA hearing. Arrangements for transcripts must be made through the SRBA Court Reporter. Fees must be paid **prior** to preparation of the transcript.
- b. **Appellate fees** -
 - (1) The Idaho Supreme Court requires payment of a filing fee for all appeals. This fee must accompany any notice of appeal.
 - (2) All appeals to the Idaho Supreme Court must include a clerk's record. Payment of a per-page fee for the preparation of the clerk's record is required. An estimate of this fee must be paid at the time the notice of appeal is filed.
- c. **Fees for services** - The following fees are required for services (I.C. § 31-3201):
 - (1) Copying of files or records.....\$1 per page
 - (2) Certifying of files or records\$.50 per page
 - (3) Affixing court certificate and seal.....\$1 per document
 - (4) Copying an audiotape of any SRBA hearing\$2 per tape

8. ERROR CORRECTION PROCEDURE

This section is reserved.

9. SPECIAL MASTERS

- a. The Presiding Judge may refer matters, including subcases, to a Special Master by an **Order of Reference** pursuant to I.R.C.P. 53.
- b. Subcases referred to a Special Master will proceed in accordance with the I.R.C.P. and these **Rules of Procedure**. Each subcase shall proceed in the same manner as any court case. Special Masters are exempt from the time requirements of I.R.C.P. 53(d)(1).
- c. A Special Master shall file reports with the Presiding Judge on the matters submitted by the **Order of Reference** and, if required, shall include findings of fact and conclusions of

law. I.R.C.P. 53(e)(1). Service shall be made on the parties to the subcases covered. Notice of the filing of the *Special Master's Recommendation* shall be reported in the Docket Sheet.

- d. The form of water rights included in the *Special Master's Recommendation* will be consistent with the *Order of Reference*. The grouping of water rights in the *Special Master's Recommendation* is left to the discretion of the Special Master. No water right claim which has not had full resolution of every element of the right shall be included in a *Special Master's Recommendation*, unless the Special Master, simultaneously with the filing of the report, certifies to the Presiding Judge that there has been an express determination that there is no just reason for delay for submission to the Presiding Judge. Notice of the filing of such certification shall be reported in the Docket Sheet.
- e. **Permissive Review** - A Special Master or any party to the subcase may seek permissive review by the Presiding Judge of the Special Master's interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion and on which immediate consideration of the determination may advance the orderly resolution of the litigation following the procedures set forth in I.A.R. 12. The Special Master shall review the motion and responses and recommend, with findings, whether it should be granted or denied. The motion and the Special Master's recommendation shall be forwarded to the Presiding Judge for determination.

10. PROCEDURE FOR WATER RIGHTS WHERE AN OBJECTION HAS BEEN FILED

- a. When the first objection to a recommendation or abstract is filed, a subcase file shall be opened and separately docketed on IWATRS. The water right number becomes the subcase number. All subsequent filings for that water right, including objections and responses, will be docketed under that subcase.
- b. Subcases will generally be referred to a Special Master by an *Order of Reference*.
- c. Unless otherwise ordered by the Presiding Judge or a Special Master, each subcase shall proceed separately from other subcases or matters at issue in the SRBA.

d. No later than 30 days after the objection period has expired, IDWR shall file a case management report with the court dividing each reporting area into Class One and Class Two Subcases.

e. **Scheduling**

(1) Class One Subcases -

(a) At the end of the objection period, the court may hold an Initial Hearing for each subcase. At the Initial Hearing, each claimant and/or objector shall be given an opportunity to meet with IDWR in an attempt to reconcile the difference between the Director's Report, the claim and the objection(s) for each subcase. If the objection(s) cannot be reconciled, the court shall set the matter for trial. The claimant and objecting party, if any, must be present at the Initial Hearing.

(b) The trial should be held within 45 days of the Initial Hearing unless otherwise ordered by the Special Master.

(2) Class Two Subcases - At the end of the objection period, the court shall hold a Scheduling Conference under I.R.C.P. 16(b). These subcases shall proceed under the court's scheduling or pre-trial order.

(3) Discretion of the Presiding Judge or Special Master - On motion of any party to the subcase or as ordered by the Presiding Judge or Special Master, a subcase may be reclassified and proceed accordingly.

f. **Amendment of Claims**

(1) Class One Subcases - Absent leave of court, claims shall be amended at or before the Initial Hearing except for the name and address of the claimant which may be amended at any time.

(2) Class Two Subcases - Absent leave of court, claims shall be amended no later than 14 days after the Scheduling Conference except for the name and address of the claimant which may be amended at any time.

(3) IDWR investigation of amended claim - The court may request that IDWR prepare an Amended Director's Report for any amended claim, including claims amended at trial to conform to the evidence. The claimant may be ordered to pay all necessary costs associated with investigating and reporting the amended claim.

g. **IDWR Involvement**

(1) Class One Subcases - Except where a party calls a representative of IDWR as its own witness, the role of IDWR will be limited to presenting geographic information (GIS) in the form of an illustration depicting the place of use and point of diversion. IDWR

may also provide any documents such as permits, licenses, decrees or transfers which may be relevant to a claim. A party calling IDWR as its own witness must notify IDWR, in writing, 7 days prior to trial.

(2) Class Two Subcases -

(a) Within 14 days following the Scheduling Conference, IDWR shall serve on each party an affidavit setting forth the factual basis of IDWR's recommendation on the disputed element(s). IDWR shall file the affidavit with the court. The court may consider the affidavit for any pre-trial matter or in lieu of any direct testimony by the IDWR affiant at trial.

(b) IDWR must be notified, in writing, at or before the pre-trial conference, should any party choose to cross-examine the IDWR affiant or call a witness from IDWR at trial.

(3) Discretion of the Presiding Judge or Special Master - Nothing herein shall prevent the Presiding Judge or Special Master from calling a representative of IDWR as its own witness consistent with I.R.E. 706 or 614 for Class One or Class Two Subcases.

h. Service of documents in a subcase need be made only on parties to the subcase and IDWR.

When a document is filed in a subcase, the Docket Sheet Procedure **is not required to be followed**, except for: motions and notices of hearings to designate basin-wide issues; proceedings on basin-wide issues; *Special Master's Recommendations*; notices of challenge to a *Special Master's Recommendation*; motions and notices of hearings for entry of partial decrees; proceedings by the Presiding Judge on decrees; motions or orders for I.R.C.P. 54(b) certification or permissive review; notices of appeal; and any other matter ordered by the court to follow the Docket Sheet Procedure.

i. The Director of IDWR or a representative shall attend all hearings in contested subcases to serve as a disinterested, nonparty fact witness consistent with the I.R.C.P. and as directed by the Presiding Judge or Special Master.

j. When a *Motion to File a Late Objection* is filed to a previously "unobjected-to" recommendation or abstract:

(1) The motion shall be reported in the Docket Sheet; and

(2) A hearing on the motion shall be scheduled by the Special Master assigned to that reporting area and notice of the hearing shall be reported in the Docket Sheet.

- k. Any party to the adjudication who is not a party to a subcase may seek leave to participate in a subcase by filing a timely *Motion to Participate*. A *Motion to Participate* shall be treated like a motion to intervene under I.R.C.P. 24 and shall be decided by the Presiding Judge or the assigned Special Master. A party to the adjudication who does not file an objection, a response or a timely *Motion to Participate* waives the right to be a party to the subcase and to receive notice of further proceedings before the Special Master, except for *Motions to Alter or Amend*.
- l. **Resetting Subcase Hearing Dates** - All hearing dates will be set by the SRBA Court. Any party to the SRBA who requests that a hearing be reset shall comply with the following requirements at least 21 days prior to the scheduled hearing:
- (1) Contact the Clerk of the SRBA Court to obtain alternative dates and times;
 - (2) Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on an alternative date and time provided by the clerk; and
 - (3) Prepare and file with the court a *Stipulation to Reset* the hearing. The hearing must be reset on one of the dates and times provided by the clerk or it will not be accepted for filing. The stipulation must specify the agreed upon date and time and must contain a statement that the party moving to reset the hearing has contacted each party or their attorney and that all have agreed on the alternate date and time. If granted, the court will send a notice resetting the hearing.
 - (4) If the parties cannot reach agreement, the party wishing to change the date and time must file an *Expedited Motion to Reset* at least 14 days prior to the scheduled hearing.
- m. **Participation in Hearings by Telephone** - Permission to participate in a hearing by telephone must be given in advance by the Presiding Judge or Special Master.
- (1) Telephone participation will not be allowed in summary judgment hearings or trials.
 - (2) Telephone participation in settlement conferences, scheduling conferences and other hearings is discouraged and only allowed with leave of the court.
 - (3) No oral testimony will be allowed by telephone.
 - (4) For hearings before the Presiding Judge, the first person to request participation by telephone will be responsible for initiating the call to the court and for making certain all parties are connected.
 - (5) For hearings before the Special Masters:

- (a) The order/notice setting the hearing will state if telephone participation is allowed.
 - (b) The parties must decide among themselves who will initiate the call.
 - (c) The Clerk of the SRBA Court must be notified at least 24 hours **prior** to the hearing as to who will be participating by telephone and who will be initiating the call.
- (6) Place your call to the court at least 5 minutes prior to the scheduled start of your hearing. No hearing will be delayed or interrupted because of telephone participation. If you have not called by the time the Presiding Judge or Special Master is ready to begin, your call will not be connected to the courtroom.
- (7) When initiating a call to the court which involves more than one party from different locations, you must use the services of a teleconference operator. Do not use your telephone system conference call feature. (Check with your telephone service or long-distance provider.)
- (8) Speaker phones are not recommended. Many times there is too much background noise or the signal is too weak to be transmitted clearly in the courtroom.
- n. If all parties to a subcase stipulate to the dismissal of any objection to a water right recommendation, a *Stipulation for Dismissal of Objection* shall be filed; and, if accepted, the dismissal shall be with prejudice.
- o. If **all** parties to a subcase stipulate to **all** elements of **one** water right, a Standard Form 5 may be submitted at any time following the close of the statutory response period.
- p. If a party must correspond with the SRBA Court, the party shall identify the subcase involved and must include a statement that all parties to the subcase have been sent a copy of the correspondence and any attachments. If these procedures are not followed, the correspondence will not be accepted by the court.

11. CONSOLIDATION OR SEPARATION OF SUBCASES AND ISSUES

Any matter at issue in any proceeding in the adjudication, including portions of or entire subcases, may be consolidated with or separated from any other matter at issue in the adjudication. Any party to a subcase may move for consolidation or separation of claims or issues.

The Presiding Judge or Special Master may order consolidation or separation on the basis of such motion or on their own. I.R.C.P. 42. If a motion to consolidate concerns issues from subcases which are all before the same Special Master, it shall be served only on parties to those subcases and shall be decided by the Special Master. If such a motion concerns basin-wide issues or issues from subcases which are not all before the same Special Master, it shall be served on all parties to those subcases, noticed through the Docket Sheet Procedure and decided by the Presiding Judge or a Special Master by *Special Order of Reference*.

NOTE: A motion to consolidate subcases is appropriate in situations where common issues of law or fact present themselves in more than one subcase and resolution of those issues can be most expeditiously and effectively achieved through presentation to the Presiding Judge or a Special Master in consolidated hearings.

12. SETTLEMENT CONFERENCES

Settlement conferences may be held at the discretion of the court. Such conferences shall be held in conformance with any pre-trial or scheduling order issued by the court. Parties and their attorney(s) of record must be personally present. No one may attend by proxy or by telephone. Each party is required to be present with the individual(s) possessing full settlement authority on every aspect of the contested subcase.

13. PROCEEDINGS ON A SPECIAL MASTER'S RECOMMENDATION

- a. The Special Master shall prepare and file with the court a *Special Master's Recommendation* which shall be served on the parties to the subcase and notice of its entry shall be reported in the Docket Sheet. Any party to the adjudication, including parties to the subcase, may file a *Motion to Alter or Amend* within 21 days from the date the *Special Master's Recommendation* appears on the Docket Sheet. Any party to the adjudication not already a party to the subcase may respond to a *Motion to Alter or Amend* by filing a *Notice of Participation* which shall set forth the party's name; the water right number; the name, address and telephone number of the attorney; and a short statement of the party's position on the issues presented in the *Motion to Alter or Amend*. **Failure of any party in the adjudication to pursue or participate in a *Motion to Alter or Amend* the *Special Master's Recommendation* shall constitute a waiver of the right to**

challenge it before the Presiding Judge. This waiver shall also apply to further proceedings in the subcase if remanded back to the Special Master.

- b. Where a *Motion to Alter or Amend* is filed in a subcase, notice will be reported in the Docket Sheet and the motion will be decided by the Special Master with or without hearing. No second *Motion to Alter or Amend* may be filed on the decision granting or denying a *Motion to Alter or Amend*.
- c. Any party who first filed or participated in a *Motion to Alter or Amend* before the Special Master may file a *Notice of Challenge* to the decision on a *Motion to Alter or Amend*. A *Notice of Challenge* shall be filed within 14 days following the date of the filing of the decision on a *Motion to Alter or Amend*. The *Notice of Challenge* shall include a detailed statement of the issue(s) and a detailed description, including hearing dates and times, of any transcript(s) requested. Once raised and detailed, the issue(s) on challenge **may not** be amended to include additional issue(s) not specifically identified in the *Notice of Challenge* except on motion and leave of court. The *Notice of Challenge* shall be reported in the Docket Sheet and shall be served on all parties to the subcase(s) challenged, the SRBA court reporter and the parties listed in Section 6e(2).
- d. If a transcript is requested in a *Notice of Challenge*, the party filing the *Notice of Challenge* must contact the court reporter for an estimate of the cost for preparation of the transcript. The estimated fee must accompany the *Notice of Challenge*.
 - (1) The transcript shall be lodged with the court within 35 days following the deadline for filing a *Notice of Challenge*.
 - (2) There will be no time for settlement of the transcript. If the transcript is incomplete or erroneous, the requesting party may file the appropriate motion to correct the transcript.
 - (3) One copy of the transcript shall be served on the challenger and the opposing party. When multiple parties are involved, the parties are required to submit a stipulation to the court stating which parties are to receive the transcript copies.
- e. At the close of the time period for filing a *Notice of Challenge*, the court will issue a scheduling order. Unless otherwise ordered, the following schedule for briefing and oral argument shall be set:

- (1) Opening briefs shall be filed simultaneously within 21 days following the deadline for filing *Notice of Challenge*. If a reporter's transcript is requested, opening briefs shall be filed simultaneously within 21 days following lodging of the transcript. Briefs shall be limited to 25 pages and shall be served on the parties to the subcase and any party filing a *Notice of Challenge*.
 - (2) Rebuttal briefs shall be filed within 14 days after the deadline for filing responsive briefs. Rebuttal briefs shall be limited to 25 pages and shall be served on the parties to the subcase and any party filing a *Notice of Challenge*.
 - (3) All parties lodging briefs in response to a *Notice of Challenge* are required to submit an original and one copy to the court.
 - (4) Oral argument on a challenge to a ***Special Master's Recommendation*** shall be held not earlier than 7 days after the deadline for filing rebuttal briefs. Only those parties filing briefs will be allowed oral argument and each party will be limited to 30 minutes.
- f. The court shall accept the Special Master's findings of fact unless clearly erroneous. The court may, in whole or in part, adopt, modify, reject, receive further evidence, or remand it with instructions. I.R.C.P. 53(e)(2).

14. ENTRY OF PARTIAL DECREES

- a. The Presiding Judge shall enter a partial decree for uncontested water rights or any water right not referred to a Special Master by an ***Order of Reference***.
- b. Following review of a ***Special Master's Recommendation*** and the resolution of any challenges, the Presiding Judge shall enter a partial decree. The partial decree shall be served only on parties to the subcase and notice of its entry shall be reported in the Docket Sheet. A certified copy of the partial decree shall be served on IDWR in compliance with I.C. §§ 42-1403 and 42-1412(6).
- c. The form of the partial decrees and the maintenance of partial decrees as the sole legal record of title to the water right shall be decided by the Presiding Judge.
- d. Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b). Partial decrees are final judgments and cannot be modified by an administrative proceeding except as provided in I.C. § 42-222.

15. APPEALS FROM PARTIAL DECREES

- a. Appeals from a partial decree by a party to a subcase may be brought pursuant to I.R.C.P. 54(b) or I.A.R. 12.
- b. Motions and proceedings for certification of a judgment as final shall follow motion practice rules.

16. BASIN-WIDE ISSUES

a. Designation -

- (1) Any party to the adjudication may file a *Motion to Designate Basin-Wide Issue* if that party believes an issue materially affects a large number of parties to the adjudication. The motion to designate shall be decided by the Presiding Judge or a Special Master by *Special Order of Reference*. A motion to designate shall state:
 - (a) The issue, in 20 words or less;
 - (b) Why the issue is broadly significant and is better resolved as a basin-wide issue;
 - (c) The need for its early resolution;
 - (d) The type of right(s) affected by the issue; and
 - (e) A description of how those rights will be affected.
- (2) The Presiding Judge may enter a *Notice of Intent to Designate Basin-Wide Issue*.
- (3) Unless otherwise ordered, a motion or notice of intent to designate shall follow the Docket Sheet Procedure.
- (4) Any party to the adjudication may respond to a motion or notice of intent to designate. The response shall be served on the movant, if any, and the parties listed in Section 6e(2) or, if being heard on an expedited basis, to the addresses on the *Court Certificate of Mailing for Expedited Hearings* which is available from the Clerk of the SRBA Court.
- (5) A motion or notice of intent to designate may be filed at any time after the filing of a Director's Report which raises the issues that are the subject of the motion. The motion shall not be heard until after the objection and response periods to the Director's Report have run.
- (6) On receipt of a motion or notice of intent to designate, the Clerk of the Court shall assign a separate subcase number to the basin-wide issue. This new subcase file number shall be included on all documents filed in the basin-wide issue and all entries reported on the Docket Sheet.

- (7) When basin-wide issues are designated by the Presiding Judge, hearings may be expedited, and all parties to the adjudication will be given notice of proceedings through the Docket Sheet Procedure.

b. **Service -**

- (1) When the Presiding Judge issues an ***Order Designating Basin-Wide Issue***, a separate certificate of mailing shall be created for each basin-wide issue. This basin-wide issue certificate of mailing will consist 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 adjudication may also become parties to the basin-wide issue by filing a *Notice of Intent to Participate* no later than 30 days after publication of the order designating in the Docket Sheet or within the time specified on the order designating.
- (2) Any pleading filed in the basin-wide issue shall be served on the parties listed on the basin-wide issue certificate of mailing. Parties to the adjudication will be given notice of further proceedings through the Docket Sheet.
- (3) Only those parties listed on the basin-wide issue certificate of mailing will be permitted to file pleadings or participate in oral argument on the basin-wide issue.

c. **Proceedings on Basin-Wide Issues to be Heard by the Presiding Judge -** A basin-wide issue will proceed as specified in the order designating, which will state the briefing schedule and the date for oral argument. Once the hearing has been held, the Presiding Judge will issue a memorandum decision.

d. **Proceedings on Basin-Wide Issues Assigned to a Special Master -**

- (1) A basin-wide issue, once designated, may be assigned by the Presiding Judge to a Special Master by a ***Special Order of Reference***. The Special Master shall:
 - (a) Issue a scheduling order stating the briefing schedule and the date for oral argument and
 - (b) After hearing, file a ***Special Master's Recommendation*** with the Presiding Judge.
- (2) **Challenges to a *Special Master's Recommendation on a Basin-Wide Issue*** - Any party to the basin-wide issue may file a *Notice of Challenge* within 30 days after the issuance of the ***Special Master's Recommendation***. When a challenge has been filed, the Presiding Judge shall issue a scheduling order setting a briefing schedule and the date for oral argument.

17. IDWR ADMINISTRATIVE PROCEEDINGS TO CHANGE REPORTED WATER RIGHTS

- a. In a reporting area where a Director's Report **has not** been filed or where a partial decree has been issued, a claimant requesting an administrative change to their water right claim(s) must contact IDWR. Notice to the SRBA Court is not required.
- b. In a reporting area where a Director's Report **has** been filed and prior to the issuance of the partial decree, claimants seeking to change their address or the ownership of a water right claim shall follow the procedures outlined under subsections (1) and (2) below. Claimants seeking to change point of diversion, place of use and period of use shall follow the procedures outlined under subsection (3).

(1) **Change of Address, Change of Ownership** (Idaho Code §§ 42-248 and 42-1409(6)) - Unless the court orders otherwise, water right claimants are required to notify IDWR of any change of address or ownership. When notified of such a change, IDWR shall file with the court a *Notice of Completed Administrative Proceeding* and shall attach a copy of the Amended Director's Report reflecting the change of address or ownership.

(2) **Split Water Rights** - Unless the court orders otherwise, when notice is given to IDWR for a change in ownership of a water right proposing to split a water right, IDWR shall immediately notify the court by submitting a *Notice of Administrative Proceeding*. Upon receipt of the *Notice of Administrative Proceeding*, the court may stay SRBA proceedings for that water right during the pendency of the administrative proceeding. Once the administrative proceeding is complete and all appeal times have run, IDWR shall file with the court a *Notice of Completed Administrative Proceeding* with an attached Amended Director's Report reflecting the division or split that has occurred. IDWR must also attach a copy of an Amended Director's Report for any and all overlapping water right claims. This procedure **cannot** be used to accomplish an enlargement as provided by I.C. §§ 42-1425, 1426 or 1427.

(3) **Other Changes - Period/Place/Purpose of Use/Nature of Use and Point of Diversion Proceedings Under I.C. § 42-222** - Claimants seeking a change in their claimed water right under I.C. § 42-222 shall contact IDWR. When an application is made with IDWR for a change pursuant to I.C. § 42-222 for a water right which has been reported in a Director's Report but where a partial decree has not been entered, IDWR shall immediately notify the court by submitting a *Notice of Administrative Proceeding* stating the type of change sought. Upon receipt of the *Notice of Administrative Proceeding*, the court may stay SRBA proceedings for that water right

during the pendency of the administrative proceeding. Once the administrative proceeding is complete and all appeal times have run, IDWR shall submit a *Notice of Completed Administrative Proceeding* with an attached Amended Director's Report which shall report all administrative changes made pursuant to I.C. § 42-222. IDWR shall include Amended Director's Reports for any and all overlapping water right claims.

- c. Amended Director's Reports shall be docketed in the subcases indicating the type of amendment made and will be reported in the Docket Sheet. Any party wishing to file an objection to an Amended Director's Report may do so by filing a *Motion to File a Late Objection* within 21 days following the notice of filing the Amended Director's Report in the Docket Sheet.

18. COURT INFORMATION FOR THE PUBLIC AND PARTIES

The IWATRS computerized register of actions (ROA) is available to the parties to the adjudication and the public. The SRBA Court's home page and electronic records can be accessed via the Internet at URL www.srba.idaho.gov