

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

<b>In Re SRBA</b>	)	
	)	<b>ORDER RE: UNCONTESTED</b>
<b>Case No. 39576</b>	)	<b>PORTIONS OF THE DIRECTOR'S</b>
	)	<b>REPORT FOR REPORTING AREA 16,</b>
	)	<b>BASIN 37, PART 1</b>
	)	

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**PROCEDURAL BACKGROUND**

1. On August 8, 2002, the Idaho Department of Water Resources (IDWR) filed a *Director's Report for Reporting Area 16, Basin 37, Part 1 Ground Water for Irrigation and Other* recommending as allowed 346 water right claims. Faulkner Land & Livestock on behalf of North Snake Ground Water District (NSGWD) filed objections to all 346 water rights recommended as allowed. The objections are identical and seek to incorporate terms of the Swan Falls Agreement into the 346 *Partial Decrees* either as remarks or by way of a general provision. Specifically, the objections state:

**This water right must be decreed with the appropriate remarks and/or general provisions necessary to incorporate the protections accorded by the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract, the 1982 State Water Plan as amended in 1985 (hereinafter jointly referred to as the Swan Falls Agreement), and other related law. Such remarks and/or general provisions are necessary to define the right, and or clarify the elements of the right, and/or administer the right. *While the protections accorded by the Swan Falls Agreement and other related state law have application to the source, quantity, and priority date elements of this water right, this objection does not seek to change the specific source, quantity, and priority date recommended by the director beyond the inclusion of appropriate remarks and/or general provisions (emphasis added).***

2. In addition, 19 other objections were filed to the substantive elements of the water rights. On November 26, 2002, because the 346 objections filed on behalf of NSGWD did not go to the substantive elements of the water rights but rather to the absence of a general provision applying to all water rights recommended as allowed, this Court issued an **Order** separating the issue regarding the proposed general provision from the subcases and consolidating the same for resolution before the Presiding Judge. The 19 subcase where objections were filed to the substantive elements were intended to be referred to the Special Master for resolution at the close of the objection and response period. The **Order** also specified that it was the intent of the Court to issue *Partial Decrees* for those water rights where the only objection was the absence of the general provision language and the substantive elements of the water right were uncontested. The Court proceeded in this fashion because NSGWD's objections did not go to the substantive elements of the water rights only to the absence of the general provision. The Court notes that the *Standard Form 1 Objection* form no longer includes a place for objections relative to general provisions. NSGWD styled the objection by checking the "source", "quantity" and "priority" date elements but then qualifying the objection in the "Reasons Supporting Objection(s)" that the objection was not to the elements but only to the absence of a general provision or remark relative to the Swan Falls Agreement.

3. On December 9, 2002, IDWR filed its Notice of Filing Statement of *Unobjected to Portions of the Director's Report for Reporting Area 16, Basin 37, Part 1, Ground Water for Irrigation and Other Water Rights Claims Pursuant to Idaho Code Section 42-1412(7)*.

4. On December 11, 2002, the Court held the hearing on the uncontested portions of the *Director's Report*. The only participants at the hearing were counsel for the State of Idaho and counsel for IDWR. At the hearing concern was raised by counsel for the State of Idaho and IDWR regarding whether the Court could treat the claims where NSGWD filed objections as uncontested. The Court heard comments from counsel and advised that a written order would issue.

## DECISION

This Court cannot find a compelling reason to delay the entry of those *Partial Decrees* where the only objection filed was to the absence of general provision language. First, the objections do not go to the substantive elements. Therefore, irrespective of the Court's decision on the general provision/remark the substantive elements of the water rights will remain the same. Second, following remand from the Idaho Supreme Court with respect to general provisions, to wit: in *A & B Irrigation, State v. Nelson*, and *Idaho Conservation League v. State*, Judge Wood, then presiding, addressed a letter to all participants (Attached hereto) in Basin-Wide Issues 5-34, 5-36 and 5-57 and all parties on the expedited mailing list regarding his intent to include the following language in *Partial Decrees* where the water right may be subject to a general provision but the general provision was unresolved. The letter notified the parties of the Court's intent to include the following "savings language" into the *Partial Decrees*:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF THE FINAL UNIFIED DECREE. I.C. § 42-1412(6).

This language was taken directly from Idaho Code section 42-1412(6) and all parties were given the opportunity to submit comments to the Court on the then proposed language. IDWR also endorsed the purpose of the language. NSGWD also concurred with the Court's proposed language and procedure. (Also Attached hereto). The purpose of the language is obvious. The Court did not want to delay entry of *Partial Decrees* where the elements were not at issue, rather only the existence or wording of a general provision. Ultimately, if applicable, the general provision would be decreed pursuant to a separate *Partial Decree* and incorporated into the decree via the savings language. The problem with delaying the entry of the *Partial Decrees* where the elements are not at issue is also obvious. Proceedings surrounding general provisions typically involve a larger number of parties and take longer to resolve. Administrative transfers occur

regularly and routinely delay SRBA proceedings. To the extent the water right can be decreed, any subsequent administrative transfers need not come back into the SRBA Court. Since implementation, the Court has avoided the delay of the entry of *Partial Decrees* in all three test basins as well as basin wide with respect to Basin-Wide Issue 5 - Conjunctive Management. If the Court did not implement the procedure, entry of many of the *Partial Decrees* would have been delayed for periods of four years or more.

Counsel brought to the Court's attention I.C. § 42- 1412(7) that provides "the district court shall enter a partial decree for those portions of the director's report for which no objection has been filed." This provision however, must be read in conjunction with I.C. § 42-1412(6) which permits the Court to enter a *Partial Decree* without including the general provision in the face of the *Partial Decree*. In this Court's view, the substance of NSGWD's objection can be appropriately treated as a general provision.

### ORDER

For the foregoing reasons, the Court can find no just reason for delaying the entry of *Partial Decrees* for those water rights where the only objection filed was by NSGWD regarding the absence of a general provision. Any determination regarding a general provision will be addressed by a separate order and *Partial Decree* and made applicable to the water rights via the savings language contained in the individual decrees.

IT IS SO ORDERED

Dated December 11, 2002

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ROGER BURDICK  
Presiding Judge  
Snake River Basin Adjudication

## CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER RE: UNCONTESTED PORTIONS OF THE DIRECTOR'S REPORT FOR REPORTING AREA 16, BASIN 37, PART 1** was mailed on December 11, 2002, with sufficient first-class postage to the following:

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

United States Department of Justice  
Environment & Nat'l Resources Div  
550 W Fort Street, MSC 033  
Boise, ID 83724

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

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Deputy Clerk