

**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 91-00005
)	
Case No. 39576)	BASIN WIDE ISSUE NO. 5
)	
)	CONNECTED SOURCES GENERAL
)	PROVISION (Conjunctive Management)
)	
)	MEMORANDUM DECISION AND ORDER
)	OF PARTIAL DECREE
)	

I. SETTLEMENT OF ISSUES

On August 27, 2001, the participating parties to Basin-Wide Issue 5 (hereinafter “Parties”) filed a *Settlement Agreement and Stipulation for Entry of Agreed Findings of Fact, Conclusions of Law, and Partial Judgment on Basin-Wide Issue 5 (“Stipulation”)*.¹ The Idaho Department of Water Resources (“IDWR”) concurred with the *Stipulation*. As a result, the Court vacated the September 24, 2001, trial date. In the *Stipulation*, the Parties agreed to the form of the conjunctive management general provision to be used by IDWR in submitting Director’s Reports within each basin, and to be used by the Court in issuing a partial decree for conjunctive management within each basin. A copy of the form of the conjunctive management general provision stipulated to by the Parties is attached hereto as “Exhibit A.”

On August 30, 2001, this Court issued an *Order to Show Cause Why General Provision Should Not Be Partially Decreed In Accordance With Stipulation of the Parties (“Order to Show Cause”)*. The *Order to Show Cause* was heard in open court on December 18, 2001, at the Snake River Basin Courthouse in Twin Falls, Idaho. On December 19, 2001, this Court issued a *First Order Re: Order to Show Cause (“First Order”)*. The *First Order* precluded all parties to Basin-Wide Issue 5, and all parties to the Snake River Basin Adjudication, with the

¹ The United States did not sign the *Stipulation*.

exception of the United States, from asserting that this Court should not enter the general provision in the manner set forth in the *Stipulation*.

On December 31, 2001, pursuant to the schedule set forth in the *First Order*, the United States filed a *Motion for Clarification*, together with a memorandum in support thereof. On January 11, 2002, the State of Idaho, Twin Falls Canal Company, *et al.*, Pioneer Irrigation District *et al.*, the North Snake Ground Water District, and the Aberdeen-American Falls Ground Water District, *et al.*, filed or joined in objections to the United States' *Motion*. Oral argument on the United States' *Motion* was heard in open court on January 22, 2002.

On February 27, 2002, this Court issued an *Order on United States' Motion for Clarification (Second Order Re: Order to Show Cause)*, addressing the issues concerning the general provision raised by the United States. The United States' *Motion* was ultimately denied.

II. REVIEW AND ACCEPTANCE OF AGREEMENT BY THE COURT

A. ROLE OF COURT.

Although the agreement reached by the parties represents final settlement of all pending issues, the Court is still charged with the duty of reviewing the contents of the agreement to ensure compliance with the law. In other words, the Court is not required to "rubberstamp" either the recommendations contained in the director's report or any agreement reached by the parties to the extent they are contrary to law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995). The Court's role however, is somewhat limited because a trial was not conducted on the merits and the Court is not required by statute to conduct an evidentiary hearing in order to accept a stipulation as final resolution. *Memorandum Decision and Order on Challenge*, subcases 36-00061, *et al.* (Sept. 27, 1999) ("*Morris*") at 17. Thus, the Court's review is limited to the existing record.

B. APPLICABLE LAW.

1. Evidentiary Value of Director's Report and/or Agreement of the Parties.

Idaho Code § 42-1411(4) provides that the filing of the director's report shall "constitute prima facie evidence of the nature and extent of the water rights . . ." I.C. § 42-1411(4) (2000). Additionally, as applied to settlement agreements, IDWR's role in the SRBA "is an independent

expert and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported” I.C. § 42-1401B(1) (1996). Therefore, when IDWR’s representative signs a *Standard Form 5* or otherwise signs off on an agreement and states that its contents are true, IDWR’s concurrence provides evidentiary value on which the Court is entitled to rely. *Morris* at 14.

2. Legal Authority and the Basis for General Provisions.

Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. “The director may include such general provisions in the director’s report, as the director deems appropriate and proper, to define and administer all water rights.” I.C. § 42-1411 (2000). “The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights.” I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water rights decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

The avoidance of potential controversy in the administration of water rights promotes the efficient administration of water rights and can be a valid basis for a general provision. In *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), the Idaho Supreme Court held that notifying water right holders as to how their rights will be administered in order to avoid future controversy among water right holders is consistent with the efficient administration of a water right and as such can be a justification for a general provision. *Id.* at 334-35, 955 P.2d at 1113-14. Defining the legal as well as the hydrologic relationship between ground and surface water rights can also be the valid basis for a general provision. In *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997), the Idaho Supreme Court acknowledged that to conjunctively manage ground and surface water rights a good understanding of both the hydrological and legal relationship between ground and surface rights

is necessary and that such issues may need to be resolved by administrative general provisions.
Id.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Based upon the record in this subcase, including the December 30, 1999, *Supplemental Director's Report to the SRBA District Court*, the February 24, 2000, evidentiary hearing, and IDWR's concurrence in the *Stipulation*, and the Court's prior analysis regarding the necessity for a general provision on connected ground and surface sources in the Snake River Basin contained in the July 2, 2001, *Order on Cross-Motions for Summary Judgment; Order on Motions to Strike Affidavits*, the Court makes the following findings of fact and conclusions of law:

1. The Court finds that all parties to the SRBA, as defined by *SRBA Administrative Order 1*, 2q., were provided notice of the proceedings on Basin-Wide Issue 5 and were given the opportunity to be heard in the proceedings concerning Basin-Wide Issue 5.

2. The Court finds that a general provision on connected ground and surface sources is necessary to define the water rights decreed by the SRBA District Court by identifying hydraulically connected ground and surface sources for the purposes of administration and defining the legal relationship between connected sources.

3. The Court finds that a general provision on connected ground and surface sources is necessary to efficiently administer the water rights decreed by the SRBA District Court by notifying water right holders as to how their rights will be administered in order to avoid future controversy in the administration of such rights.

4. The Court concludes, as a matter of law, that a general provision on connected ground and surface sources is necessary to define the water rights decreed by the SRBA District Court by identifying hydraulically connected ground and surface sources for the purposes of administration and defining the legal relationship between connected sources.

5. The Court concludes, as a matter of law, that a general provision on connected ground and surface sources is necessary to efficiently administer the water rights decreed by the SRBA District Court by notifying water right holders as to how their rights will be administered in order to avoid future controversy in the administration of such rights.

6. The Court concludes, as a matter of law, that the form and content of general provision on connected ground and surface sources as stipulated by the parties, and concurred with by the Idaho Department of Water Resources, is not contrary to established law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995).

III. ORDER

Based on the foregoing, the form of the conjunctive management general provision is hereby decreed as set forth in the attached "Exhibit A."

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

IT IS SO ORDERED.

DATED: _____

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication