

**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
)	
Case No. 39576)	Basin-Wide Issue 5
)	(Conjunctive Management
_____)	General Provision)

**AMENDED ORDER SETTING TRIAL DATE, FINAL PRE-TRIAL CONFERENCE,
DISCOVERY DEADLINES, PRE-TRIAL MOTIONS AND BRIEFING SCHEDULE
FOR BASIN-WIDE ISSUE 5 (CONJUNCTIVE MANAGEMENT GENERAL
PROVISION) — I.R.C.P. 16**

**I.
DESCRIPTIVE SUMMARY**

This Order modifies the pre-trial, trial and settlement conference scheduling order entered previously on May 26, 2000.

**II.
PROCEDURAL BACKGROUND**

1. On May 26, 2000, the Court entered an *Order Setting Trial Date, Final Pre-Trial Conference, Discovery Deadlines, Pre-Trial Motions and Briefing Schedule for Basin-Wide Issue 5 (Conjunctive Management General Provisions) and Order for Alternative Dispute Resolution – I.R.C.P. 16*.

2. In accordance with the May 26, 2000, *Order*, the matter proceeded on a dual-track schedule (litigation and settlement). The parties engaged in a series of settlement

conferences over the course of six months. By agreement of the parties, former Idaho Supreme Court Justice Robert Bakes was appointed by the Court as mediator.

3. On June 30, 2000, the parties filed opening pre-trial briefs in accordance with the May 26, 2000, *Order*.

4. On August 15, 2000, IDWR filed a response to the issues raised by the parties in their opening briefs, also in accordance with the May 26, 2000, *Order*.

5. Optional reply briefing to IDWR's response was set to be due on August 31, 2000, and the evidentiary hearing/trial was set for October 30, 2000. However, on August 24, 2000, in order to facilitate settlement efforts, at the request of the mediator and because of the Idaho Supreme Court's ruling removing Judge Wood as the presiding judge of the SRBA, the Court stayed the *Order*.

6. On December 15, 2000, the Honorable Roger S. Burdick replaced the Honorable Barry Wood as presiding judge of the SRBA.

7. On January 10, 2001, Justice Bakes notified the Court in writing that the settlement efforts had been unsuccessful to date.

8. On January 16, 2001, the Court held a status and scheduling conference for purposes of resuming the previously stayed trial schedule. The parties were given ten days to submit unavailable dates for the months of September and October 2001. The State of Idaho also informed the Court at that time of its intention to file a motion for summary judgment.

9. On January 19, 2001, the State of Idaho filed a *Motion for Summary Judgment* together with a memorandum in support thereof and the Affidavit of Karl J. Dreher.

III. ISSUES RAISED AT THE JANUARY 16, 2001, STATUS/SCHEDULING CONFERENCE

At the January 16, 2001, status conference, in addition to taking up scheduling matters, each party was given the opportunity to address the Court regarding the status and efficacy of the settlement negotiations and whether having the Court rule on any motions would facilitate settlement efforts. The general consensus of the parties was that there was still disagreement as to the scope of the issues to be tried at the forthcoming evidentiary

hearing. The Court inquired as to whether any motions could be ruled on that would better narrow or define the issues. The State of Idaho informed the Court of its intention to file a motion for summary judgment in an effort to narrow the issues. The parties were also in general agreement that a ruling on a motion would assist with narrowing the issues for trial although there was uncertainty over the form of the motion. (i.e. motion in limine, summary judgment etc.). The State filed its motion for summary judgment on January 19, 2001.

IV. SCOPE OF EVIDENTIARY HEARING

Originally, in an attempt to address the issues and concerns raised by the parties at the status conference, it was the Court's intent to reiterate and elaborate on Judge Wood's recitation of the scope of the evidentiary hearing discussed in the May 26, 2000, *Order*. Since the State of Idaho has already filed its motion for summary judgment and the Court views summary judgment as one possible mechanism for narrowing the issues for trial, the matter should proceed accordingly. In the event judgment is not rendered on the whole subcase, the Court can still define the issues to be tried *See* I.R.C.P. 56(d).

V. SCHEDULING ORDER

1. Date Requirements in this Order: For any date requirement indicated herein which falls on a Saturday, Sunday, or court holiday, the due date shall be the next day which is not a Saturday, Sunday, or court holiday. I.R.C.P. 6(a).

2. Trial Date: IT IS ORDERED that a trial in the above-captioned subcase shall commence on **Monday, September 24, 2001, at 9 a.m. at the Snake River Basin Adjudication Court, 253 – 3rd Avenue North, Twin Falls, Idaho**, and continue each business day thereafter until completed.

3. Final Pre-Trial Conference: Pursuant to I.R.C.P. 16(d):

IT IS ORDERED that a final pre-trial conference will be held on **Tuesday, August 28, 2001, at 1:30 p.m. at the Snake River Basin Adjudication Court, 253 – 3rd Avenue North, Twin Falls, Idaho.**

4. Pre-Trial Discovery Served/Discovery Completed:

4.1: Pre-Trial Discovery Served: IT IS HEREBY ORDERED that with the exception of the schedule for witness disclosure which is governed by item number 5 below, all discovery including but not limited to the taking of all depositions of all lay and expert witnesses, all interrogatories, requests for production/inspection and requests for admissions, **shall be served no later than 5:00 p.m., Friday, May 11, 2001.**¹

4.2: Discovery Completed: All discovery shall be completed no later than **5:00 p.m., Tuesday, July 31, 2001.** By completed, it is meant that all depositions shall actually be taken, interrogatories answered and/or supplemented, requests for production/inspection completed, and requests for admissions answered. Motions to compel shall be filed so as to accommodate the time requirements of this provision.

5. Witness Disclosure:

5.1: Lay Witnesses: IT IS ORDERED that disclosure of all lay witnesses, except lay impeachment witnesses, be completed between the parties no later than **5:00 p.m., Friday, May 11, 2001.** All non-disclosed lay witnesses, except impeachment witnesses, shall be excluded from testifying in the trial of the action unless permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(J).

5.2: Expert Witnesses: IT IS ORDERED that disclosure of all experts, except rebuttal experts, **shall be completed no later than 5:00 p.m., Friday, May 25, 2001.** Disclosure of any rebuttal experts (not experts for the case in chief) **shall be completed no later than 5:00 p.m., Friday, June 1, 2001.** All non-disclosed expert witnesses, except impeachment witnesses, shall be excluded from testifying in the

¹ Parties are reminded that IDWR is not a party to the SRBA and, therefore, may not be served with interrogatories as a means of discovery pursuant to I.R.C.P. 33(a).

trial of the action unless permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(J).

6. Exhibits: Each party shall produce for examination by all other parties all exhibits, except impeachment exhibits, which will be offered into evidence at the trial **prior to the day set for the pre-trial conference.** I.R.C.P. Rule 16(e)(1).

IT IS HEREBY FURTHER ORDERED that a party shall not offer any exhibit(s) at the trial other than those listed in accordance with the above paragraphs, except when offered for impeachment purposes, or when otherwise permitted by the trial court in the interest of justice. I.R.C.P. Rule 16(e)(6)(I). If any exhibits are discovered after the date set for pre-trial conference, disclosure to the Court and the opposing party shall be made immediately by filing and service of such notice and exhibit, stating the date of the discovery. I.R.C.P. Rule 16(h).

IT IS HEREBY FURTHER ORDERED that all exhibits relevant to trial, except impeachment exhibits, shall be pre-marked prior to the day scheduled for the pre-trial conference. Arrangements for marking said exhibits **and for exhibit number assignments** can be made through the Deputy Clerk of the Court at 208-736-3011, 8:00 a.m. – 5:00 p.m., Monday through Friday, excluding holidays.

8. Pre-Trial Motions: IT IS ORDERED that all pre-trial motions, including dispositive motions, evidentiary issues and motions in limine **shall be filed no later than 5:00 p.m., July 31, 2001.** This will provide sufficient time for responsive briefing and a ruling from the Court in advance of the final pre-trial conference.

Pre-trial motions shall be supported and opposed by briefs citing the applicable law relevant to the issue being heard. Affidavits, if appropriate, may also be filed to support or oppose any motion if evidence is to be offered on a motion pursuant to I.R.C.P. 43(e).

9. Proceeding on the Pending Motion for Summary Judgment: On January 19, 2001, the State of Idaho filed a motion for summary judgment. The motion shall proceed as follows:

9.1: Responsive or Opposition Briefing and/or Affidavits: All responsive briefing and supporting affidavits shall be filed no later than **5:00 p.m., Wednesday,**

February 28, 2001. Responsive briefing and affidavits should segregate, identify and discuss those issues which in that parties' view can be decided as a matter of law and those issues that require fact finding beyond what is in the record. The primary aim of the Court is to narrow and focus the issues for trial in the event it is ultimately determined that an evidentiary hearing is necessary at this stage of the proceedings.

9.2: Reply Briefing: All reply briefing shall be filed no later than **5:00 p.m., Wednesday, March 14, 2001.**

9.3: Hearing on the Motion for Summary Judgment: The hearing on the motion for summary judgment shall will be held on **Tuesday, March 20, 2001, at 1:30 p.m. at the Snake River Basin Adjudication Court, 253 – 3rd Avenue North, Twin Falls, Idaho.**

10. Optional Reply Briefing to IDWR's Response: The May 26, 2000, *Order*, was stayed prior to the time set for the parties to file optional reply briefs to IDWR's response to opening briefs. Parties intending to file optional reply briefing may do so no later than the date set for the final pre-trial conference.

11. Post-Evidentiary Hearing Briefing: Following the evidentiary hearing, the Court will allow time to submit additional briefing at the request of the parties or if the Court concludes that additional briefing would be beneficial.

**VI.
SUMMARY OF DEADLINES**

Motion for Summary Judgment

5 p.m., Wednesday, February 28, 2001	Responsive/Opposition Briefing and/or Affidavits
5 p.m., Wednesday, March 14, 2001	Reply Briefing
1:30 p.m., Tuesday, March 20, 2001	Hearing on Motion for Summary
5 p.m., Friday, May 11, 2001	Pre-trial Discovery Served
5 p.m., Friday, May 11, 2001	Lay Witnesses Disclosed
5 p.m., Friday, May 25, 2001	Experts Witnesses Disclosed
5 p.m., Friday, June 1, 2001	Rebuttal Witnesses Disclosed
5 p.m., Tuesday, July 31, 2001	Pre-Trial Motions Filed
5 p.m., Tuesday, July 31, 2001	All Discovery Completed
Prior to Tuesday, August 28, 2001	Optional Reply Briefing
Prior to Tuesday, August 28, 2001	Exhibits Exchanged/Pre-marked
1:30 pm, Tuesday August 28, 2001	Final Pre-Trial Conference
9 a.m., Monday, September 24, 2001	Trial Begins
To be set	Post-hearing Briefing

IT IS SO ORDERED:

DATED: _____

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication