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The Role of the Idaho Department of Water Resources in the Snake River Basin Adjudication

Phillip J. Rassier

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THE ROLE OF THE IDAHO DEPARTMENT OF WATER RESOURCES IN THE SNAKE RIVER BASIN ADJUDICATION

PHILLIP J. RASSIER*

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I. INTRODUCTION

On June 17, 1987, the Director of the Idaho Department of Water Resources, A. Kenneth Dunn, filed a petition for “the general adjudication *inter se* of all rights arising under state or federal law to the use of surface and ground waters from the Snake River basin water system and for the administration of such rights.”¹ The petition was filed in accordance with an authorizing statute enacted by the Idaho Legislature in 1985.² On November 19, 1987, Daniel C. Hurlbutt Jr., Presiding Judge for the SRBA, issued a *Commencement Order* in response to the Director’s petition initiating the Snake River Basin Adjudication (SRBA).³ The Idaho Supreme Court subsequently affirmed the district court’s order commencing the SRBA requiring the adjudication of the rights of all those who use the water of the Snake River basin water system, including tributaries, within the state of Idaho.⁴ With the exception of a small number of pending matters, the SRBA was concluded with the entry of a Final Unified Decree (signed by SRBA District Court Judge Eric J. Wildman) on August 25, 2014, bringing closure to a twenty-seven-year judicial proceeding resulting in the decreeing of 158,690 water right claims.⁵

A. SRBA Commencement Order

The *Commencement Order* contained a definition of the Snake River Basin water system located within Idaho as follows:

Beginning at the point where the southern boundary line of the state of Idaho meets the western boundary line of the state of Idaho, then following the western boundary of the state north to the northern boundary of the Clearwater Basin, in Idaho, in section 36, T. 36 N., R. 6 W., B.M., then following the northern watershed divide of the Clearwater River Basin north and east to the eastern boundary of the state of Idaho in section 4, T. 42 N., R. 11 E., B.M., then following the eastern boundary of the state southwest to the northern boundary of the Bear River Basin in section 35, T. 10 S., R. 46 E., B.M., then following the northern watershed divide of the Bear River Basin, in Idaho, southwest to the southern boundary of the state of Idaho in section 26, T. 16 S., R. 28 E., B.M., then following the southern boundary line of the state of Idaho west to the point of beginning.⁶

Consistent with the governing statutes as updated by the Legislature in 1985, the SRBA District Court ordered the Director of the Idaho Department of Water Resources

1. *In re Snake River Basin Water Sys.*, 764 P.2d 78, 81, 115 Idaho 1, 4 (1988).

2. *Id.*; IDAHO CODE ANN. § 42-1406A (2015) (enacted by 1985 Idaho Sess. Laws 27, amended by 1985 Idaho Sess. Laws 286, and uncodified and amended by 1994 Idaho Sess. Laws 1452–53, effective April 12, 1994).

3. SRBA Commencement Order, *In re SRBA*, Case No. 39576 (Nov. 19, 1987), https://www.idwr.idaho.gov/WaterManagement/AdjudicationBureau/SRBA_Court/PDFs/commenc.pdf.

4. *In re Snake River Basin Water Sys.*, 764 P.2d at 86, 115 Idaho at 9.

5. Final Unified Decree, *In re SRBA*, Case No. 39576 (Aug. 25, 2014), <http://www.srba.idaho.gov/Images/2014-08/0039576XX09020.pdf>.

6. SRBA Commencement Order, *supra* note 3, at 5.

(“Director,” “Department,” or “IDWR”) to proceed with the various statutory steps necessary to undertake the adjudication of the rights to the use of water in the Snake River basin water system in Idaho.⁷ Those steps included: 1) Investigate the water system in the manner provided in Idaho Code § 42-1410 (Supp. 1987); 2) Prepare the notice of order commencing a general adjudication containing the information required by Idaho Code § 42-1408A(1) (Supp. 1987); 3) Serve notice of the order commencing a general adjudication in accordance with chapter 14, title 42, Idaho Code; and 4) File affidavits and other documents with the SRBA District Court identifying the persons served with a notice of the order commencing the adjudication.⁸

B. 1994 Statutory Amendments

During the early stages of the SRBA proceedings, and for reasons not relevant to this article, “the role of various state agencies, including the role of the Director, became a significant issue in the SRBA.”⁹ In response to this controversy, the SRBA District Court framed Basin-Wide Issue No. 2 to address the role of the Department and the Director as a party in the judicial proceeding to determine rights to the use of water in the Snake River Basin.¹⁰ Before the district court was able to address the basin-wide issue, the Idaho Legislature enacted significant amendments to the statutes governing the SRBA.¹¹

Under the 1994 amendments to the SRBA statutes, “the Director was no longer included in the definition of a ‘Party,’ I.C. § 42-1401(7) (1994), and the Director’s reports, notices of claimed water rights, objections to those claims, responses to objections, and negotiated agreements were no longer referred to as pleadings. I.C. § 42-1412(4) (1994).”¹² The 1994 amendments also added new Idaho Code Section 42-1401B defining the role of the Director of the Department in the SRBA. It provides as follows:

42-1401B. ROLE OF THE DIRECTOR IN AN ADJUDICATION. (1) The director’s role under this chapter is as an independent expert and technical assistant to assure that claims to water rights acquired under state law are accurately reported in accordance with the procedures of chapter 14, title 42, Idaho Code. The director shall make recommendations as to the extent of beneficial use and administration of each water right under state law and may use uniform parameters for quantification of beneficial use recommended for rights within climatic regions of the state.

(2) The director shall not be a claimant on behalf of the state or any subdivision of the state in an adjudication.

(3) The director shall not be a party to an adjudication.¹³

7. *Id.* at 7–8.

8. *Id.*

9. *In re* SRBA Case No. 39576, 912 P.2d 614, 619, 128 Idaho 246, 251 (1995).

10. *Id.* at 620, 128 Idaho at 252.

11. *Id.*; 1994 Idaho Sess. Laws 1443–91.

12. *In re* SRBA, 912 P.2d at 620, 128 Idaho at 252.

13. IDAHO CODE ANN. § 42-1401B (West 2015).

In addition, the 1994 amendments included changes to the SRBA statutes which were intended to expedite the adjudication process by redefining the scope and evidentiary effect of the Director's reports.¹⁴ The revisions provided that the Director's report (that defines the elements of the recommended water rights acquired under state law) shall upon filing with the district court "constitute prima facie evidence of the nature and extent of the water rights."¹⁵ The amendments further provided, "[t]he unobjected to portions of the director's report shall be decreed as reported."¹⁶

In response to the 1994 amendments, the SRBA District Court designated Basin-Wide Issue No. 3 "[i]n order to resolve the legal and constitutional questions presented by the application of this legislation to the SRBA"¹⁷ After briefing and argument, the district court issued a decision concluding that "most of the 1994 amendments and statutes [were] unconstitutional."¹⁸ On appeal, the Idaho Supreme Court reversed the district court's decision, in part, and upheld the constitutionality of the 1994 amendments to the extent they represented changes in substantive law.¹⁹

Among the substantive changes upheld were the removal of the Director as a party to the proceeding, and the directive that the Director's report shall constitute prima facie evidence of the elements of the reported water rights. With respect to the procedural changes in the 1994 amendments, the court held that the "legislative determination as to the Director's status as an expert" is of no effect, and that the legislative direction that provisions of the Director's report to which no objections are filed "shall be decreed as reported" conflicts with the constitutional authority of the courts.²⁰ The Court explained that the standards for qualifying an expert witness are provided by Idaho Rule of Evidence 702, and that the procedures to be followed by the district court where no objections have been raised to provisions of the Director's report are set out in Idaho Rule of Civil Procedure 55 governing the entry of judgment by default.²¹

C. Roles of IDWR in the SRBA

While minor legislative adjustments were made to the statutes governing the SRBA in subsequent years, the enactment of the substantive statutory changes in 1994 involving the role of the Director and the Department in the adjudication and their subsequent approval by the Idaho Supreme Court marked an important milestone for the adjudication process and put the SRBA on the road to an ultimately successful conclusion. Other statutory provisions also significantly impacted IDWR's role in the SRBA and proved highly instrumental in expediting the adjudication process. For example, the number of claims filed in the adjudication was greatly reduced due to the provisions of Idaho Code § 42-1420 relied upon by the court in allowing the claimants of *de minimis* domestic and stock water rights to defer adjudication of their claims.²² In addition, the

14. *Id.*

15. IDAHO CODE ANN. § 42-1411(4) (West 2015).

16. *Id.*

17. *In re SRBA*, 912 P.2d at 620, 128 Idaho at 252.

18. *Id.* at 621, 128 Idaho at 253.

19. *Id.* at 623, 128 Idaho at 255.

20. *Id.* at 626, 128 Idaho at 258.

21. *Id.* at 626, 128 Idaho at 257-58.

22. *See* Order Granting State of Idaho's Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred *De Minimis* Domestic and Stock Water Claims, *In re SRBA*,

1994 removal of the Director's role of investigating rights to the use of water acquired under federal law substantially reduced the workload of Department staff and likely expedited the resolution of these claims.²³ In general, the importance of the role of the Idaho Department of Water Resources in achieving the successful completion of the SRBA can hardly be overstated. However, the roles played by the legislative and judicial branches of government and by water users together with a supporting public were equally important to attaining success.

The Department of Water Resources played many roles in the SRBA process, in combination with other players, beginning with early planning for the adjudication and including: evaluation and support for updating of statutory authorities; developing needed legislative and executive budgetary support; determining and satisfying land owner and water user notice requirements; assessing and acquiring appropriate computer and other technical capabilities; hiring and training of necessary staff; the completion or consolidation²⁴ of a multitude of ongoing individual-right and tributary-wide adjudication proceedings within the Snake River basin; selection of appropriate test basins for the SRBA; development and service of first and second-round notices of the SRBA based on land ownership and water right records; development of public awareness and educational programs utilizing brochures, public meetings, media presentations and press releases; providing technical support for federal reserved water rights negotiations; and active participation in the steering committee established by the SRBA District Court and in the court's monthly status conferences which provided an opportunity for open dialogue among all participants.

The most fundamental and significant role played by the Idaho Department of Water Resources in the SRBA, however, was in the examination of water right claims for water rights acquired under state law and the preparation and submission of recommendations to the district court for decree of the rights.²⁵ As noted previously the Department did not play a similar role with respect to water rights acquired under federal law.²⁶ The Department's role of investigating claims to water rights acquired under state law and recommending the rights to the district court for decree is the principal focus of this article.

II. STATUTORY AUTHORITIES AND RESPONSIBILITIES OF THE DEPARTMENT

Section 42-1410, Idaho Code, sets forth the authorities and responsibilities of the Director in examining the water system and the claims to water rights in a general adju-

Twin Falls County Case 39576 (Dec. 18, 2013), <http://www.srba.idaho.gov/Images/2013-12/0039576xx08835.tif> (including the attached Order Governing Procedures dated June 28, 2012).

23. See IDAHO CODE ANN. §§ 42-1410, 1411A (West 2015).

24. Some ongoing adjudications, for example the Payette Adjudication, were not completed but were consolidated into the SRBA. See Order Consolidating the Payette Adjudication, *In Re SRBA*, Case No. 39576 (Idaho Feb. 8, 2001).

25. See IDAHO CODE ANN. §§ 42-1410–1411 (West 2015).

26. See *id.* § 42-1411A (captioned "Service of notice of and determination of water rights established under federal law") (amended in 1996).

dication.²⁷ The statute provides “the director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system for water rights acquired under state law.”²⁸ The Director must “evaluate the extent and nature of each water right for which a notice of claim under state law has been filed.”²⁹ Department employees “have authority to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant’s water use.”³⁰ Department employees must “make a reasonable effort to contact the claimant to schedule a date and approximate time for the examination.”³¹ The employee must receive the “permission of the claimant or other occupant” before entering a building housing the well or other diversions works without a court order unless the structure is unlocked and there is no reasonable expectation of privacy.³² Finally, the section provides that any maps prepared by the Department and pertinent to the water system examination must be made available at designated locations to assist “any claimant in preparing and filing claims and objections to the director’s report.”³³

Section 42-1411, Idaho Code, sets out the manner for preparation of the Director’s Report which contains the recommendations of the Director to the district court on how the water rights claimed in a general adjudication should be decreed.³⁴ The statute authorizes the Director to file the Director’s Report in multiple parts as deemed appropriate given the size or complexity of the basin.³⁵ In the SRBA, the Director filed ninety-five Director’s Reports covering the forty-three separate hydrologic sub-basins comprising the Snake River Basin in Idaho. As many as five Director’s Reports were filed in some sub-basins. The Director also filed three supplemental season of use (SOU) reports and numerous annual late claims reports. Both domestic and stock (D&S) reports and irrigation and other (I&O) reports were filed in forty basins.

Subsection 2 of section 42-1411 provides that in preparing the Director’s Report the following elements shall be determined to the extent the Director deems appropriate and proper to define and administer those water rights in the basin acquired under state law:

- (a) the name and address of the claimant;
- (b) the source of water;
- (c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;
- (d) the date of priority;

27. *See id.* § 42-1410.

28. *Id.* § 42-1410(1).

29. *Id.*

30. *Id.* § 42-1410(2).

31. *Id.*

32. *See id.*

33. *Id.* § 42-1410(3).

34. *See id.* § 42-1411.

35. *Id.* § 42-1411(1).

- (e) the legal description of the point(s) of diversion; if the claim is for an in-stream flow, then a legal description of the beginning and ending points of the claimed instream flow;
- (f) the purpose of use;
- (g) the period of the year when water is used for such purposes;
- (h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except that the place of use may be described using a general description in the manner provided under section 42-219, Idaho Code, which may consist of a digital boundary as defined in section 42-202B, Idaho Code, if the irrigation project would qualify to be so described under section 42-219, Idaho Code;
- (i) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and
- (j) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.³⁶

Subsection 3 of section 42-1411 provides that “[t]he director may include such general provisions in the director’s report, as the director deems appropriate and proper, to define and to administer all water rights.”³⁷ Subsection 4 of the statute provides that the Director’s report be filed with the district court and made a part of the record and that it “shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law.”³⁸ Although the Director’s report is prima facie evidence of the nature and extent of the water rights, “[e]ach claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right.”³⁹ Likewise, a claimant seeking “to establish any element of a water right which is in addition to or inconsistent with the description in a director’s report[,]” or an objector seeking to rebut any element of the right, bears the burden of going forward with the evidence with respect to that element.⁴⁰

III. INVESTIGATIVE ROLE OF THE DEPARTMENT

The investigative role played by the Idaho Department of Water Resources in the SRBA was an important key to its success. It was the responsibility of the Department to receive all water right claims based on state law and to review and investigate them as required before preparing a description of the right and submitting it as a recommendation to the SRBA District Court in the form of a Director’s Report. The early experience of the Department in the initial three basins reported, known as the Test Basins,

36. *Id.* § 42-1411(2).

37. *Id.* § 42-1411(3).

38. *Id.* § 42-1411(4).

39. *Id.* § 42-1411(5).

40. *Id.*

demonstrated that more than ninety percent of the rights were found acceptable as recommended in the Director's Report and decreed by the court without objection.

This experience in the Test Basins demonstrated to the Department's adjudication staff the important responsibility they carried to ensure that the water rights to be decreed in the SRBA were accurately described and that the rights correctly reflected the uses authorized to be made. The Test Basin experience also demonstrated that when objections were filed it was often possible for department employees to informally resolve those objections through conversations with the claimants leading to agreements on how the water right descriptions could be modified in a manner mutually acceptable to the claimant and the Department and consistent with state law. The important lesson learned for all participants in the adjudication process was that most water rights would be decreed in the form recommended to the SRBA District Court in the Director's Reports. This lesson highlighted the importance of hiring and retaining department adjudication staff employees capable of exercising sound practical judgment and ensuring that they had the knowledge and training necessary to investigate water right claims and prepare accurate recommendations for inclusion in the Director's Reports. To assist the adjudication staff in performing their job, the Department prepared a Claim Investigation Handbook,⁴¹ which provided general guidelines for investigating claims and preparing water right recommendations.⁴² The remaining discussion in this section of the article is based upon the author's interpretation of various provisions of the IDWR Claim Investigation Handbook and the author's prior knowledge and understanding of the procedures addressed.⁴³

A. Claims-taking

In accordance with the SRBA District Court's *Commencement Order*, the first major undertaking was for the Department to serve notice of the commencement of the adjudication upon the potential water right claimants within the Snake River Basin water system in conformance with the requirements of section 42-1408, Idaho Code. Because of the large geographic size of the Snake River Basin in Idaho, and the great number of water rights to be adjudicated, it was neither practical nor feasible to proceed simultaneously with respect to the total to be adjudicated. The commencement notices were mailed by county or by zip codes within the county for counties with large populations.

1. Notice of SRBA Commencement Order

Initial county notice of the SRBA *Commencement Order* was by "publication once a week for three (3) consecutive weeks in a newspaper of general circulation published in each county," or if no newspaper was published in the county, the notice was

41. See generally IDAHO DEP'T OF WATER RES., CLAIM INVESTIGATION HANDBOOK (amended July, 2009) (available upon request from IDWR). The *Claim Investigation Handbook* was originally prepared by former IDWR attorney A. Lynne Krogh as a comprehensive manual surveying Idaho water law and adjudication procedures. The 2009 version of the *Handbook* is a condensed and reorganized version of the original.

42. *Id.*

43. See *infra* Section III.

“published in a newspaper having general circulation in that county.”⁴⁴ In addition, the Department posted notice of the *Commencement Order* in each county courthouse, county recorder’s office, and county assessor’s office.⁴⁵ Published notice was augmented by sending a copy of the notice of order by ordinary mail to each person in the county “listed as owning real property on the real property assessment roll within the boundaries of the water system to be adjudicated at the address listed on the real property assessment roll.”⁴⁶ In addition to the county property assessment rolls, the Department also looked to its own water right records, U.S. Department of Agriculture Farm Service Agency records (formerly the ASCS, Agricultural Stabilization and Conservation Service), and BLM (U.S. Bureau of Land Management) mining claim records for names and addresses to build its notice mailing lists.

In order to provide constructive notice of the commencement of the adjudication upon subsequent purchasers and mortgagees of real property, the Department also filed a copy of the notice of the *Commencement Order* with the office of the county recorder in each county covered by the water system being adjudicated.⁴⁷

2. Assistance Provided in Claims-taking.

Claimants were given not less than 90 days after notification to complete their claims and file them with the Department.⁴⁸ Members of the Department’s adjudication staff were made available to provide assistance as requested by water users. The Department frequently made staff readily available to claimants through the use of mobile offices. The Department made available existing water right records, maps, and aerial photography to assist with the claims-taking process. Department employees were able to compare water rights claimed with known water uses to determine if the water rights as claimed appeared to be complete and accurate. Subsequent investigation of water uses would be conducted using any other available data, computer and satellite technology, and field inspections.

3. Second Round Service of Notice.

Following expiration of the time period allowed for filing notices of claims to water rights under the initial notice of the SRBA *Commencement Order*, the Department made a second round of service in conformance with statute upon holders of water rights for which no notice of claim was filed.⁴⁹ The Department compared the filed notices of claims with Department records and other available information to determine whether there were known existing water rights for which a notice of claim had not been filed. Upon identifying rights for which no claim was filed, the statute required the Department to “make a reasonably diligent effort in accordance with the court order to determine the land to which the possible claim is appurtenant, the last known owner of

44. IDAHO CODE ANN. § 42-1408(2)(b) (West 2015).

45. *Id.* at § 42-1408(2)(c).

46. *Id.* at § 42-1408(2)(d).

47. *See id.* § 42-1408(2)(e).

48. *Id.* § 42-1408(1)(h).

49. *See* IDAHO CODE ANN. § 42-1408(4) (West 2015).

that land, and the last known address of that owner.”⁵⁰ Department employees expended considerable time and effort in the tedious work of researching county land ownership records to determine the owners of land to which unclaimed water rights were appurtenant. It was these landowners upon whom the Department made second round service of the SRBA *Commencement Order* by mail. The second round service provided an additional time period of no less than ninety (90) days from date of service to file a notice of water right claim with the Department.⁵¹ Thereafter, a claimant could amend a notice of claim or file a late claim only upon “good cause shown to the district court or the director.”⁵²

B. Overview of Claims Review and Investigation

Following the completion of claims taking within a hydrologic basin, statute provides that “[t]he director shall prepare a director’s report on the water system.”⁵³ The Director’s Report may be filed in parts as determined appropriate by the Director.⁵⁴ For the SRBA, the Department determined that the Director’s Report should be comprised of 43 separate parts, plus subparts, with numbers and geographic area corresponding to the Department’s system of Administrative Basins used in the designation and administration of water rights throughout the state. The Department identified three hydrologic sub-basins to serve as Test Basins for the adjudication based on the unique characteristics and issues existing in each of these sub-basins and the need to provide training and experience for the adjudication staff in each of the Department’s regional offices.⁵⁵

By statute, the Director must define the elements of each water right included in the Director’s Report “to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law.”⁵⁶ The elements as listed in section 42-1411(2), Idaho Code, have previously been set forth above.

The Department’s SRBA role of examining the water right claims and preparing the recommendations for the court was a large, complex, and sometimes tedious task. Given the importance of the property interests involved, the natural tendency was to strive for a thorough examination of each water right. In reality, it was obvious that reasonable limitations on available funding and time would not allow for a detailed inspection of every element of every water right. In order to balance the need for thoroughness with the realities of available resources, the Department placed a heavy emphasis on maximizing the use of technology to enhance the efficiency of its employees and the accuracy of their work to produce Director’s Reports that were completed in a timely fashion and at a reasonable cost. Throughout the SRBA process, the Department continued its emphasis on improving employee efficiency and production through the

50. *Id.*

51. *See id.*

52. *Id.* at § 42-1409A(3).

53. *Id.* at § 42-1411(1).

54. *Id.*

55. The three SRBA Test Basins were Basin 34 – Big Lost River, Basin 36 – Thousand Springs, and Basin 57 – Reynolds Creek.

56. IDAHO CODE ANN. § 42-1411(2) (West 2015).

use of enhanced technology and employee training, cross-training, education, goal setting, and performance recognition.⁵⁷

1. Initial Claims Review

The claims investigation process began with the distribution of claims to adjudication agents working in the Department's regional office responsible for preparing a particular Director's Report. The Department compared an electronic inventory of the claims filed with the paper files to make sure that all claims were assigned to an agent. The claims were sorted into groups corresponding to discrete hydrologic sub-basins before assignment to individual agents. The grouping of the claims by sub-basins allowed for the methodical staging of the agent's work product during the investigation and error correction stage occurring before the Department and during the subsequent court process. Although this did not always occur, the agent ideally further organized the claims in a manner that recognized any inter-relationships among the rights based on water source and ownership. For example, the claims might most logically be investigated starting at the top of the stream drainage and then moving downstream to the bottom of the drainage. The agents were encouraged to group the claims in a manner giving recognition to the similar or shared characteristics of the water rights, and that allowed for field examination of the rights as a group. A field exam schedule was then developed by the agent for those rights requiring further investigation. A field examination normally was scheduled for a right only when the in-office review of the claim did not result in obtaining sufficient information to allow the agent to verify the elements of the water right. Many claims based on water right licenses issued by the Department did not require further field examination, but almost all non-domestic claims based on the beneficial use method of appropriation did require field examination. Ideally, the schedule was developed in coordination with the claimants and in a manner that minimized the number of necessary visits to an area.

2. In-Office Investigation and File Maintenance

Upon receipt, each claim filed in the SRBA was identified with an "A" prefix and data entered into the Department's computer system to create an electronic record of the claim. The coded record was carefully proofed to make sure it accurately reproduced the written claim and any subsequent amendments to the original claim filed by the claimant. Throughout the adjudication process the "A" record was maintained to reflect the right as claimed. Beginning in June 2000, the "A" prefix was dropped and the record became known as the "AJ Claim."⁵⁸ A duplicate electronic record of the claim was

57. The IDWR Adjudication Bureau's focus on maintaining high work quality standards for its employees is reflected in the detailed provisions of the thirty-page handbook it utilized to guide staff and supervisors in their efforts to continuously seek quality improvement in the work products and services they provided to the public, to IDWR, and to the SRBA District Court. *See* IDAHO DEP'T OF WATER RES., CONTINUOUS QUALITY IMPROVEMENT IN THE SNAKE RIVER BASIN ADJUDICATION, https://www.idwr.idaho.gov/WaterManagement/AdjudicationBureau/Reports_Presentations/PDF/Continuous_Quality.pdf (last visited Nov. 27, 2015).

58. Interview with Carter Fritschle, Adjudication Section Manager, Idaho Dep't Water Res. (Apr. 6, 2015).

computer-generated for each claim and designated with an “R” prefix. The “R” record was the file that served as the basis for preparation of the Department’s recommendation of the water right in the Director’s Report. Thus, any change made by an agent to an element of the right from the way it appeared on the claim form was made only to the “R” record. Once the claimed water right was recommended to the court in a Director’s Report the “R” prefix was removed from the file. Use of the “R” prefix was discontinued in June 2000 and this working record instead became identified as the “AJ Recommendation.”⁵⁹

A “claim investigation file” was also created for each water right claim. This file was used to maintain a copy of all documents and information relating to the claim. A claim verification report (CVR) was included in each claim investigation file to indicate the extent of the claim review needed and the status of the review. Beginning in June 2000, the CVR became the eCVR (digital version) and was no longer printed and added to the claim investigation file. The claim investigation file also served as a place to record the basis of the recommendation for each right whether or not different from the claim. Where the recommendation differed from the claim, a brief written explanation was used to explain the difference. Once the adjudication process was completed with the issuance of a partial decree by the court, this claim investigation file was archived by the Department with the State Records Center (SRC) but the file remains part of IDWR’s permanent record of the water right. The “old” IDWR vault file was also sent to the SRC with a new vault file to be created by IDWR as needed starting with the partial decree.

3. GIS Shape Files and Document Management

The Department produced Geographic Information System (GIS) shape files and layouts for all irrigation water rights claimed in the adjudication. The Department initially used outside contractors to create GIS shape files and layouts for irrigation claims, but only followed that practice for a few years in a few basins. In subsequent years the GIS shape files and layouts were prepared by Department staff. As part of the claim investigation, it was the responsibility of the agent to verify the accuracy of the GIS map. In some instances, this was accomplished through a “drive by” field examination if it was not otherwise necessary to meet with the claimant on the property and the agent was investigating other land parcels in the area. The “ground-truthing” of the GIS map was noted by the agent on the map with the agent’s name and the date and time.

a. Explanation of GIS and its use in the SRBA

In 1997, the Department’s adjudication staff decided that using GIS software in identifying points of diversion (PODs) and places of use (POUs) for SRBA water right claims and recommendations was worth pursuing. Advantages included better location of the features as claim elements, accurate determination of acreage, visual inspection

59. *Id.*

of overlapping claims, and automated updating of legal descriptions for PODs and POU^s.⁶⁰

GIS software provides the ability to convert features to a digital form using a known coordinate system. This is known as georeferencing. Once georeferenced, each feature can also have associated attributes. These georeferenced features can be overlaid or compared with other georeferenced layers, such as imagery, digitized administrative areas or digitized base layers such as the Public Land Survey (PLS), parcels or scanned maps.

As the GIS was being designed for use in the SRBA, the IDWR staff acquired statewide PLS information (Township/Range/Section/QQ) from the U.S. Bureau of Land Management (BLM). The staff also acquired all color-infrared aerial photography for 1987 that fell within the SRBA boundary. This was primarily from the National Soil Conservation Service, but some was also acquired from the BLM and the National Forests in Idaho with dates as close to 1987 as possible.

In 1998, IDWR staff and contractors began scanning and georeferencing aerial photography taken in 1987, the year of commencement for the SRBA. Using Environmental Systems Research Institute's (ESRI) ArcView GIS software, PODs and POU^s were digitized in relation to this imagery and other georeferenced basemaps. Homes (domestic use), commercial or industrial buildings (commercial or industrial use), dairies (stockwater), or irrigated fields (irrigation use) could be seen on the imagery and used as a guide to digitizing these POU^s. The POU^s could then be overlaid digitally with the PLS layer to automatically update the legal descriptions in the database for each claim's features, and acreage could be calculated from the digital boundary for irrigation use. Having these calculations for both legal descriptions and acreage done automatically improved accuracy and saved staff time.

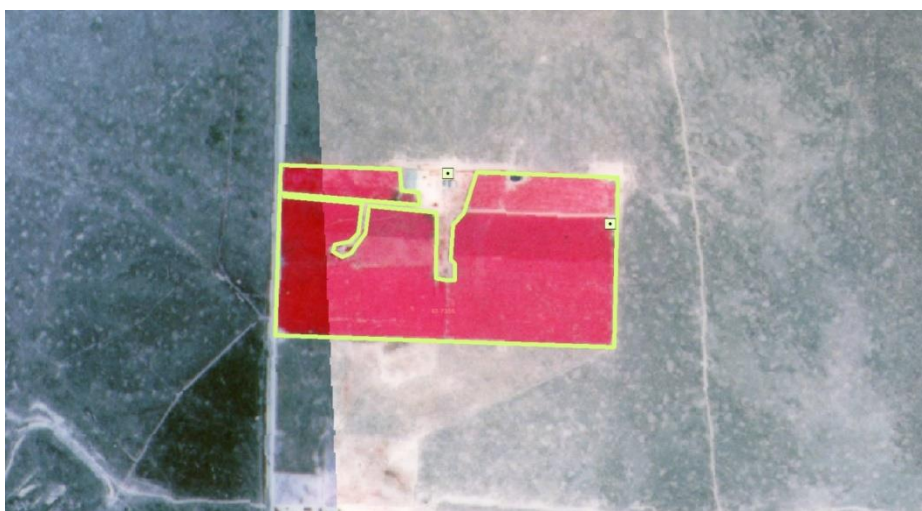
In addition to the PLS, ownership and parcel boundary information proved to be a valuable addition to the digital layers available to the IDWR adjudication agents. However, only one or two of the thirty-five counties within the SRBA boundary had digital parcel information available. Starting in 1999, the Department began a program of cooperative-funding contracts to have counties or their contractors digitize their parcels, associate ownership information with each parcel and update this information regularly. These county parcel layers were then provided to the Department and merged into a statewide parcel layer for use by adjudication staff and other IDWR staff. Between the Snake River Basin and the North Idaho adjudications, twenty-six counties participated in these contracts. This information has proved invaluable to staff in determining current ownership for mailings, changes of ownership or notices of violation, and for providing more accurate POU locations.

Throughout the duration of the SRBA, additional GIS overlay functions were made available to staff to check basin numbers, update season of use and headgate requirements, and to check the relationship of claim features to other administrative factors such as designated critical ground water areas or state-protected streams to assist in

60. This section of the article is comprised of edited material received by the author from Michael Ciscell, Technical Support, Adjudication Section, Idaho Dep't Water Res. (April 7, 2015) (on file with author).

developing conditions for inclusion on claim recommendations. Additionally, automated map generation provided IDWR staff with a quick and standardized map output for use in Director's Reports and for water right licensing.

The Department's GIS software developed for use in the SRBA has grown to support almost every IDWR business process by providing the ability to create and edit both spatial and tabular information relevant to a specific business process. These business processes include water rights permitting and licensing, well permitting and underground injection control, stream channel alteration, water measurement and notice of violation tracking, water supply bank and water right accounting. Each of these processes benefits from having accurate locational information tied to both their specific business data and also to other business features present at the same location.



b. Sample of GIS Shape File Used in SRBA

The above figure depicts decreed Boise Basin Ground Water Right No. 63-7355 in the name of the State of Idaho for irrigation use on seventy-five acres. The yellow line is the boundary of the irrigated area. The red coloring indicates the occurrence of evapotranspiration showing where irrigation is occurring. The small squares with dots in the middle represent wells (points of diversion).

c. SRBA Document Management by IDWR

One of the obvious challenges presented to IDWR in undertaking the Snake River Basin Adjudication was developing an effective and efficient system for managing the millions of documents that would be generated in the process of receiving, reviewing and preparing recommendations on the more than 160,000 claims to water rights filed in the proceeding.⁶¹ To manage these documents, the Department maintained a central depository for all documents filed in the SRBA. Early on, the SRBA District Court en-

61. Interview with Vicki Kelly, Legal Assistant, Idaho Att'y Gen. Water Res. Section, Idaho Dep't Water Res. (April 7, 2015).

tered an order requiring that the Department maintain copies of all pleadings and other documents noted on the court's monthly Docket Sheet.⁶² This document depository was maintained at the Department's state office in Boise. In addition, the district court in 1997 issued SRBA Administrative Order 6 prohibiting the destruction by IDWR of any document or evidence relied upon or used in making a water right recommendation in a Director's Report:

IT IS FURTHER ORDERED that "IDWR may not destroy any document or evidence . . . relating to a water right . . . 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."⁶³

To ensure compliance with the court's orders addressing document management, the Department instituted numerous procedures to both protect SRBA related documents from destruction and to make them readily available for public use. All SRBA related incoming mail was received by the IDWR receptionist and routed to the Department's Adjudication Bureau (or Section). There copies were made of all received mail for further routing to assigned regional offices and staff, and for filing in subcase or main case legal files as necessary. The original or a copy of each document was placed in a temporary holding area organized by date received, together with copies of any documents filed with the court by IDWR, and held there until the Docket Sheet for that month was issued by the SRBA District Court.

Once the district court issued its monthly Docket Sheet, the documents held in the temporary holding area were justified and numbered according to the Docket Sheet and then placed in folders which were identified chronologically in accordance with the date of filing with the district court. Those folders were then placed on shelves at IDWR's state office and known as depository files. In addition, the Department maintained regional depositories in its Eastern, Southern, Western and Northern Regional Offices located in Idaho Falls, Twin Falls, Boise and Coeur d'Alene, respectively. The regional depositories were established in accordance with the order of the SRBA District Court requiring that the Department maintain copies of objections, responses, and supporting documents for water rights claims in the respective regional offices.⁶⁴ Copies of subcase related mail received directly by the regional offices or forwarded from the state office were filed in the appropriate adjudication claim files and made available for public view.

62. Order Establishing Docket Sheet Procedure, *In re* SRBA, Case No. 39576 (Aug. 10, 1997), www.srba.idaho.gov/forms/ORDER.pdf; see also SRBA Admin. Order AO1 § 6(c)(2), <http://www.srba.idaho.gov/forms/AO1.pdf>.

63. *In re* SRBA Case No. 39576, 912 P.2d 614, 619, 128 Idaho 246, 251 (1995); SRBA Admin. Order AO1, 9, <http://www.srba.idaho.gov/forms/AO1.pdf> (establishing procedure for evidence and document preservation, § 5.c.) (last visited Nov. 27, 2015).

64. SRBA Admin. Order AO1, 11, <http://www.srba.idaho.gov/forms/AO1.pdf> (explaining docket sheet procedure, § 6.C.2) (last visited Nov. 27, 2015).

Beginning in 2000, the Department initiated the electronic scanning of documents in its Water Allocation Section. This technology was adopted for use in managing documents by the Adjudication Staff as early as 2002, using PowerDocs software, and expanded further in 2006 to all other sections within the Department. An electronic version of all incoming and outgoing SRBA documents was parked in a common area on a shared computer drive. Adjudication Staff, in the state office and in the regions, would then receive a daily email informing them when the new mail documents for that date were available for viewing. This allowed the Adjudication Staff to access mailed documents by opening PowerDocs and querying by date for any previously scanned documents. Hard copies of the documents were still gathered for inclusion in the document depository and copies were printed for filing in the subcase or main case legal files. Adjudication claim files would then be comprised of hard copies of older documents as well as more recent documents available for public viewing electronically on the IDWR public website.

C. Steps in the Claims Investigation Process

Following organization of claims into appropriate groupings by the agent, the rights were ready for the investigation process. The steps taken were as follows:

1. Claimant Contact

Prior to undertaking a field investigation of a claim, the adjudication agent sought to make personal contact the claimant. The purposes of the contact were to introduce the agent; explain the investigation process; set a time for the field exam and explain how to reschedule if necessary; and describe the types of information the claimant might possess regarding water use under the claim that would be of assistance during the field exam.

The agent was required to keep a record of contacts made with the claimant for inclusion in the claim file. The record normally included the name of the agent and the person with whom he/she spoke, the date of the contact, notes conveying relevant information exchanged, and any other relevant information known to the agent regarding the issue. If the claimant was represented by an attorney of record, the agent was instructed to make prior contact with the attorney through email and to preserve a copy for the file.

2. Field Examinations

Whenever possible, the agent was expected to perform the field exam by appointment with the claimant, and preferably with the claimant present and participating in the exam. Suggested procedures were provided to the agents to guide their actions in conducting the field examination:

a. Agents were encouraged to bring to the field exam two copies of the GIS map for the area. The first copy was for the agent's use in confirming the truth and accuracy of the GIS map. The second copy was for the use of the claimant who might be asked to mark the location of important features of the water right such as point of diversion (POD) and place of use (POU). Agents were also encouraged to bring to the field exam a copy of the ASCS map for the POU, if available, because it was sometimes easier to

orient oneself to the ASCS map than to the GIS map. The ASCS maps, however, were no longer provided for IDWR use after the mid-1990s.⁶⁵

b. Agents were encouraged to share their observations with the claimant during the field exam, particularly regarding any problems the agent might observe or the existence or remains of prior water delivery systems that may have been used on the property. Agents were expected to make note of pertinent information provided by the claimant regarding matters such as number of acres irrigated, diversion quantities, historical water uses, cropping patterns, prior owners, or conflicts with other users.

c. Agents typically asked claimants to mark on the GIS or ASCS map the important features of the water right including the location and boundaries of irrigated acres, points of diversion, and location of ditches or pipelines. If the agent marked the map for the claimant, the claimant was asked to indicate his or her agreement. The marked copy of the map was then labeled for placement in the claim file as the claimant's representation of the marked elements of the water right.⁶⁶ The agent later prepared an agent's map of the water right, which was also marked for identification and placement in the claim file.

d. The agents sought to reach concurrence with claimants on the major elements of the water right during the field exam. If agreement was not feasible, the agent's responsibility was to prepare the recommendation consistent with the agent's findings.

e. Agents were directed to carefully photograph any lands for which the claimant claimed an irrigation right but which appeared to the agent not to have been irrigated. The agents ideally prepared notes identifying the date, time, location, orientation, photographer, persons present, and photo content for each photograph. However, the files contain many undocumented photos.⁶⁷

f. Agents normally asked to examine all documents the claimant possessed which supported elements of the claimed water right, such as priority date, when the right was based on beneficial use, and not on license or prior decree. The agent would ask the claimant to provide copies of those documents the agent considered necessary for the claim file to support the recommendation of the right. If the agent identified an initial disagreement with the claimant regarding any element of the right, the agent was to make that known to the claimant. The agent also was to indicate to the claimant the additional information the claimant needed to provide in order for the agent to be able to recommend the element as claimed.

g. At the completion of the field exam, the agent would request the claimant to call if additional information came to mind that should be added to the claim file or that the agent should know about. For this purpose, the agent left a business or field exam card with the claimant.

h. In the initial years of the adjudication, agents were provided a hand-held recorder for use in making oral notes immediately after the field exam for inclusion in the claim file. Use of the recorders, however, did not last long and they were used only by a few agents. The oral notes described the agent's observations during the exam and

65. Interview with Carter Fritschle, IDWR Adjudication Section Manager (Apr. 6, 2015).

66. *Id.* This practice tapered off significantly in later years during the push to finish the adjudication.

67. *Id.*

summarized any conversations with the claimant. The recorder was not to be used to record conversations with the claimant except in rare instances such as claimant's advanced age, poor health, or plans to leave the jurisdiction, and then only with the claimant's full knowledge and consent.

D. Preparation of Preliminary Recommendation

The next step after completing any necessary field exam and reviewing the information and documents provided by the claimant or otherwise collected by the Department was for the agent to prepare the Department's preliminary recommendation for the right. Generally, a right was not recommended for more water, acres, purposes of use, or with an earlier priority date than claimed. An amended claim or an additional claim was required for the agent to consider recommending increases or enhancements in those elements. In contrast, an amended claim generally was not required for the agent to recommend different acres, a different point of diversion, additional points of diversion, or a longer season of use for irrigation use. If the claimant had provided no additional information, the preliminary recommendation was prepared as if no additional claimant information existed. The claimant, however, still had another opportunity to provide information to the Department during the notice of error process that followed issuance of the preliminary recommendation. If, in the agent's view, based on existing records, the water right appeared to have been significantly under-claimed, the agent could contact the claimant to confirm claimant's intent.

1. Proof of Facts

By statute, the recommended elements of water rights contained in a Director's Report "constitute prima facie evidence of the nature and extent of the water rights" upon the filing of the report with the district court.⁶⁸ If the Director's recommendation for a right was challenged in a proceeding before the SRBA District Court, the claimant of the right bore "the ultimate burden of persuasion for each element of [the] water right."⁶⁹ Given the status of the Department's recommendation as prima facie evidence before the court, it was important that the agents attempted to secure documentation or other evidence to support the bases for their recommendations. This was, of course, even more important for complicated claims or claims that appeared likely to be contested. If the recommendation was based on undocumented information, the agent was expected to prepare written or audio notes for the file that explained the factual bases for the recommendation.

In close cases, the agents were expected to exercise their sound judgment, common sense, and understanding of the law in formulating their recommendations. If necessary, an agent could call upon the assistance of other experienced agents, supervisors, and a deputy attorney general assigned to provide the agent assistance as requested. Finally, it was important to remember that the agent's recommendation was not the last opportunity to ensure the water right was correctly defined. The notice of error process that followed issuance of the preliminary recommendations, and the objection period following the filing of the Director's Report, gave further opportunities. However, the

68. IDAHO CODE ANN. § 42-1411(4) (West 2015).

69. IDAHO CODE ANN. § 42-1411(5) (West 2015).

demands for overall efficiency in the adjudication process made it important for the agents to make a correct and acceptable recommendation at the first opportunity.

2. Proof of Ownership

Agents generally did not ask for separate proof by the claimant showing ownership of the water right being claimed. The notarized claim form required the claimant to indicate “whether the claimant is the owner of the place(s) of use” of the water right.⁷⁰ However, the claim form requirement that the claimant by signing the form “affirmed under penalty of perjury that the statements contained in the [foregoing document] are true and correct” was not added until 2009 after nearly all SRBA claims had been filed.⁷¹ Ownership issues did occasionally arise in instances where duplicate claims were filed by different claimants to the same right, or in instances where information available to the Department indicated an ownership question existed. In the event of duplicate claims by different claimants, the agent corresponded with both claimants to determine whether there was co-ownership of the right by the two claimants or whether ownership of the right was contested. If ownership was contested, the claimants were asked to submit evidence of their ownership of the right. In all cases of contested ownership, the agent was expected to request review by legal staff to assist in developing an appropriate recommendation for the right.

3. On-going Administrative Proceedings

Because of the extended length of the SRBA process it was common for changes in water rights to occur between the filing of the claim and the entry of a partial decree by the district court. Therefore, care had to be taken by members of the adjudication and water allocation staffs of the Department to coordinate the transfer approval process with the adjudication recommendation process. Also, there were frequent instances in which proof of beneficial use under a water right permit was filed prior to the commencement of the SRBA but for which the Department had not yet issued a license for the right. In these instances, it was necessary for the water allocations staff to coordinate with the adjudication staff to issue a license for the right prior to the finalization of the Director’s Report, if possible. If a request for an administrative change to the water right (for example, a transfer request to move the point of diversion) was filed with the Department after the filing of Director’s Report, Department staff would notify the SRBA District Court by submitting a Notice of Administrative Proceeding (“NAP”). The court would pause processing of the water right in the SRBA until completion of the administrative proceeding. Once the administrative proceeding was complete, the Department would issue a Notice of Completed Administrative Proceeding (“NCAP”). If any of the elements of the water right were changed as a result of the administrative proceeding, the NCAP would be accompanied by a new Director’s Report for the water

70. IDAHO ADMIN. CODE r. 37.03.01.060.02(k) (2009).

71. IDAHO ADMIN. CODE r. 37.03.01.060.02(p) (2009).

right. This ensured the water right decreed in the SRBA would be consistent with administrative approvals issued by the Department.⁷²

E. Notice of Error Process

To help ensure that the recommendations of water rights in the Director's Reports were as accurate as possible, the Department used a Notice of Error (NOE) process aimed at resolving differences between IDWR and the claimant as to how a right should be recommended and to identify those differences, if any, that could not be informally resolved and would likely lead to objections to the Director's Report being filed with the district court.⁷³ The process generally began with the Department sending to each claimant the preliminary recommendations for that claimant's rights together with a GIS map, instructions and explanatory material, and a NOE form to be returned to the Department within thirty days, although this procedure did vary to some degree.

The informational materials included notice of the time and place of a public meeting referred to as a Notice of Error Meeting or Preliminary Director's Report Meeting. IDWR and Attorney General's Office personnel attended the meeting to answer questions and resolve disputes regarding the recommendations. The special master assigned to the basin would attend the meeting to explain the process relative to the SRBA Court. The NOE forms, used to identify errors, express concerns, or request changes in the recommendations were collected from those present. Claimants not attending the meeting were invited to send their NOE forms to IDWR. Claimants could request a conference with IDWR to discuss concerns with the way their right was being recommended, although very few of these occurred prior to the filing an objection. If an agreement was not reached as a result of the notice of error process, it meant that an objection could be filed to the recommendation before the district court and the agent's next involvement with the right could be in an informal or formal subcase proceeding. Settlement efforts between IDWR and the claimant did not stop with the filing of an objection before the district court. More often, the settlement process continued if it had been initiated prior to filing the Director's Report.

IV. ROLE OF IDWR BEFORE THE SRBA DISTRICT COURT

When a claimant, or a third party, filed an objection with the SRBA District Court objecting to the manner in which claimant's water right was recommended by IDWR in the Director's Report, further proceedings in the matter occurred under special procedures established by the court. The special procedures were issued as *SRBA Administrative Order No.1* ("SRBA A01"),⁷⁴ which supplemented applicable Rules of Civil Procedure with specialized procedures "to the extent necessary to allow for the fair and expe-

72. See *In re* SRBA, Case No. 39576, 12, (Idaho June 26, 2014), <http://srba.idaho.gov/Images/2014-08/0039576XX09020.pdf>.

73. The NOE process was not required by statute, court order, or rule. It was simply a good practice initiated by IDWR to make sure its recommendations submitted to the district court and afforded legal weight were as accurate as possible.

74. See generally SRBA Admin. Order A01, <http://www.srba.idaho.gov/forms/A01.pdf> (last visited Nov. 27, 2015).

ditious resolution of all claims or issues in the SRBA.”⁷⁵ The extent of involvement by IDWR agents in objection proceedings depended upon the nature and complexity of the issues raised by the objection. SRBA AO1 divided objections into two classes identified as a Class I case or a Class II case. The definition of each subcase class and IDWR’s involvement in each was spelled out in Section 2, the Definitions portion of SRBA AO1 as follows:

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 forty 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.⁷⁶

As the SRBA proceeded, it became clear that the Class One/Class Two subcase distinction did not result in expedited resolution of the Class One subcases. Class One subcases tended to be just as complex as Class Two subcases and tended to require the same amount of time and resources to resolve. Accordingly, the Class One/Class Two distinction was not emphasized in later years.⁷⁷

Once an objection was filed, the district court issued an order of referral to a special master and the special master would generally set the subcase for a hearing that was commonly referred to as the “initial hearing.” In general, the initial hearing would take place in person in the administrative basin where the water right’s point of diversion was located. The special master would calendar multiple initial hearings in a day, generally setting the initial hearings at fifteen to thirty minute intervals. At the initial hearing, the parties and department staff and department legal counsel would first meet to discuss possible settlement of the objection. If no settlement was reached, it was common during much of the adjudication for settlement discussions to remain open with periodic status conferences conducted with the special master before the matter was ultimately scheduled for trial. In later years, as efforts to complete the adjudication in-

75. *In re* SRBA Case No. 39576, 912 P.2d 614, 619, 128 Idaho 246, 251 (1995) (quoting district court).

76. SRBA Admin. Order AO1, 3, <http://www.idaho.gov/forms/AO1.pdf> (last visited Nov. 27, 2015).

77. Recognizing the fact that the Class One/Class Two subcase distinction did not work as intended, the district court completely dropped the distinction from the Definitions section in Administrative Order 1 for the Coeur d’Alene-Spokane River Basin Adjudication (CSRBA) in northern Idaho. Amended CSRBA Admin. Order 1, 3 (March 4, 2015), http://srba.idaho.gov/Forms/CSRBA_A01.PDF.

tensified it became necessary to expedite the settlement process. As a result, if settlement did not occur at the initial hearing, the parties and the department legal counsel would go before the special master and set a trial schedule to help assure timely resolution of the subcase.

IDWR's primary role in any subsequent negotiations was to ensure that an agreement to resolve the objection maintained a reasonable and legally sound definition of the water right based on the additional information made available by the claimant or other parties. If the parties and IDWR concurred in a proposed settlement of the objection, they each signed a Standard Form 5 resolving the objection.⁷⁸ The Standard Form 5 was signed by the responsible agent for the Department and approved as to form by the attorney representing the Department. If IDWR did not concur in a settlement, the subcase proceeded to hearing before the special master.

During the settlement process, the IDWR adjudication staff worked closely with the deputy attorney generals assigned to provide legal counsel. Usually, a specific attorney was assigned responsibility for the subcases arising in a particular basin. This attorney, assisted by a paralegal, was responsible for setting up and maintaining a legal subcase file containing copies of all documents and information from the claim investigation file for the right. The information contained in these files was used by legal staff to prepare a case management report for the basin. From this point in the process, Department legal counsel took lead responsibility in communicating with the other parties to the subcase and their attorneys.

Judicial proceedings in unresolved subcases before the SRBA District Court were governed by the Idaho Rules of Evidence and the Idaho Rules of Civil Procedure, as supplemented by the provisions of SRBA Administrative Order 1 with specialized procedures "to the extent necessary to allow for the fair and expeditious resolution of all claims or issues in the SRBA."⁷⁹ Administrative Order A01 provided that a representative of the Director of IDWR was required to be in attendance at all contested hearings before the SRBA court to serve as a nonparty fact witness if called upon by the court. Similarly, the court reserved the right to call a representative of IDWR as the court's own witness.⁸⁰ When a subcase was scheduled for trial it was common for the special master to request the Department to prepare a "Supplement Director's Report" providing a written narrative of IDWR's position on the water right recommendation being challenged. These reports were referred to as "706 Reports" as shorthand for the court having asked IDWR, pursuant to Idaho Rule of Evidence 706, to issue a supplemental Director's Report.⁸¹

78. Standard Form 5, Stipulated Elements of a Water Right, *In re* SRBA, <http://srba.idaho.gov/forms/sf5.pdf> (last visited Nov. 27, 2015).

79. *In re* SRBA Case No. 39576, 912 P.2d 614, 619, 128 Idaho 246, 251 (1995) (quoting district court).

80. SRBA Admin. Order AO1, 16, <http://www.srba.idaho.gov/forms/AO1.pdf> (Addressing IDWR involvement in subcases. "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.") (last visited Nov. 27, 2015).

81. I.R.E. 706(a) ("A witness so appointed shall advise the parties of the witness' findings, if any; a deposition of the witness; may be taken by any party; and the witness may be called to testify by any party or by the court pursuant to Rule 614(a) [Calling and Interrogation of Witnesses by Court]. The expert witness shall be subject to cross-examination by each party, including a party calling the expert as a witness.").

IDWR's role was similar at each trial. The special master would generally call an IDWR agent as the first witness at trial. IDWR legal staff would lead the IDWR agent through direct examination, having the agent explain the basis for IDWR's recommendation. The parties would then cross-examine the agent. IDWR's recommendation constituted prima facie evidence of the nature and extent of the water rights acquired under state law.⁸² Thus, if a claimant of a water right acquired under state law disagreed with the recommendation, the claimant would then present evidence to the special master to establish any element of a water right which was in addition to or inconsistent with the recommendation. The claimant would try to "burst" the presumption afforded to IDWR's recommendation. If the claimant supported IDWR's recommendation but another party was challenging the recommendation, the claimant would generally present evidence to support IDWR's recommendation following the IDWR agent's testimony. The party challenging the recommendation would then present evidence in support of their position. Ultimately, the special master would issue a report and recommendation recommending the elements of the water rights to the district court. Because only parties to the adjudication could challenge a special master's report and recommendation to the district court, the department's role in the subcase essentially ended upon completion of the trial.

V. IDWR PERSONNEL ORGANIZATION AND MANAGEMENT FOR THE SRBA

The primary focus of this article has been on the role of the Idaho Department of Water Resources in achieving the successful completion of the SRBA. That momentous achievement for the state of Idaho could not have been reached without the conscientious work, ingenuity, and dedication of scores of individual employees who served on IDWR's adjudication staff, forming a cohesive team that maintained a remarkable single-minded focus over a span of three decades, advancing with confidence, competence, and determination toward a single objective.

The Department's adjudication staff began to take shape in the mid-1980s with a few key employees under the strategic leadership of Dave Shaw whose careful planning laid the groundwork for accomplishing what some considered a near-impossible feat.⁸³ By the end of the decade, when claims-taking had begun, the adjudication staff operated as one of four bureaus within IDWR and was approaching its maximum full-time staff size of about forty employees, which it reached in 1993. From 1996 through 2006 the full-time position count reached a plateau of thirty-two to thirty-six employees and fell dramatically thereafter.⁸⁴ Varying numbers of temporary employees and contract em-

82. IDAHO CODE ANN. § 42-1411(4) (2015).

83. Dave Shaw served as the IDWR Adjudication Bureau Chief until 1995 when he was succeeded by David R. Tuthill, Jr. Tuthill led the Adjudication Bureau until 2007 when he was appointed Director of the Department of Water Resources, a position he held until June 2009. Thereafter, Donald Shaff assumed the Bureau Chief position and served until his retirement from the Department in 2010. Given the reduced staffing levels required for adjudication services in Idaho in more recent years, the adjudication staff now is designated as a section within the IDWR Water Allocation Bureau and is led by Section Manager Carter Fritschle.

84. Email from staff of Hum. Resources Dep't, IDWR, to author (April 7, 2015) (on file with author) (Reporting the number of full-time employee positions for IDWR's Adjudication Bureau from fiscal year 1991 through 2008 was as follows: FY91-37; FY92-37; FY93-40; FY94-40; FY95-40; FY96-

ployees were also hired as needed during the early and middle years of the adjudication to keep the intensive work effort on track.

The adjudication staff makeup, during the years that it was operating at or near full strength, consisted of the bureau chief assisted by clerical and legal staff in the State office in Boise. Except in the earlier years, legal services for the Adjudication Bureau were provided through the Idaho Office of the Attorney General and at full strength consisted of four attorneys and three paralegals. The State office staff also included a technical support section consisting of ten full-time employees and approximately five temporary employees. In addition, each of the four IDWR regional offices contained an adjudication unit of four to six employees except for the Northern Regional Office in Coeur d'Alene which included one or two employees.

VI. CONCLUSIONS

It can be concluded without reservation that the Idaho Department of Water Resources played a major role in the planning and initiation of the Snake River Basin Adjudication and was equally instrumental in contributing to its timely and successful completion. These formidable accomplishments spanning a generation could not have occurred, however, without the similarly impressive contributions provided by the legislative and judicial branches of government and by water users together with a supporting public.

The SRBA was an undertaking unique in size, scope and importance to the state of Idaho and its citizens. By determining Idaho rights to the use of water in the Snake River Basin, the SRBA set the stage for improved water rights administration and water resource management in the state for many decades to come, if not the next century. As an additional benefit, the GIS software developed for use in the SRBA will continue to support water administration and other IDWR business processes far into the future. The enhancement to water administration capabilities resulting from the technological advancements developed during the SRBA is most fitting given that better water rights administration was after all one of the primary reasons for undertaking the adjudication.

The author extends a special thanks to all those who have provided assistance in the preparation of this article.⁸⁵

33; FY97-36; FY98-36; FY99-36; FY00-36; FY01-36; FY02-36; FY03-32; FY04-34; FY05-34; FY06-34; FY07-27; FY08-14.5).

85. In addition to those whose assistance has already been acknowledged, the author gratefully thanks Garrick Baxter, Chief, Water Resources Section, Idaho Office of Attorney General, David R. Tuthill, Jr., Idaho Water Engineering, LLC, and Chris Bromley, McHugh Bromley, PLLC, all of Boise, Idaho, for their kind assistance in reviewing the article and providing valuable information and suggestions that have helped to present a more thorough and accurate picture of IDWR's role in the SRBA.