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Department of Water Resources

**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

Case No. 39576

)
) Subcase No. 36-02569 2659
)

) CLEAR SPRINGS FOODS, INC.'S
) MOTION TO PARTICIPATE and
) SUPPORTING MEMORANDUM
) and REQUEST FOR EXPEDITED
) HEARING
)
)

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs"), by and through counsel, and moves to participate in this matter pursuant to AOl § 10(k) and I.R.C.P. 24. As set forth below, Clear Springs holds water rights that stand to be affected by the outcome of the pending motion to set aside the partial decree for water right no. 36-02659. Accordingly, Clear Springs' motion to participate should be granted.

ARGUMENT

AOl 10(k) allows "any party to the adjudication who is not a party to a subcase [to] seek leave to participate in a subcase by filing a timely *Motion to Participate*." A motion to participate is treated like a motion to intervene under I.R.C.P. 24. Rule 24 provides for intervention of right in a civil proceeding, such as the SRBA, as follows:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the state of Idaho confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

I.R.C.P. 24(a).

Clear Springs has filed several water right claims in the SRBA, including water right no. 36-02708, which is diverted from the same spring source as Clear Lakes' water right no. 36-02659. Clear Springs, as a "claimant" in the SRBA, also qualifies as a "party" for purposes of *AOI* 10(k). I.C. § 42-1401A(1) and (6). Therefore, Clear Springs meets the statutory standard for participating in this subcase.

Clear Lakes' water right no. 36-02659 was recommended to this Court through an amended Special Master's report issued on April 15, 2002. This Court subsequently issued an amended partial decree seven days later on April 22, 2002. As a result, IDWR proceeded to administer various water rights held by both Clear Lakes, including water right no. 36-02659, and Clear Springs during the summer of 2002. Clear Springs has significant interests in participating in any proceeding that seeks to set aside Clear Lakes' prior decree for water right no. 36-02659 as it has served as the basis for administration of that water right. Finally, Clear Lakes' water right no. 36-02659, among other things, is the subject of additional administrative and judicial proceedings that are currently pending before IDWR and the District Court for the Fifth Judicial District (Case No. CV-02-00803).

Accordingly, Clear Springs respectfully requests an order granting intervention in this matter. Clear Springs further requests an expedited hearing on this motion to be held

immediately prior to the hearing on Clear Lakes' motion to set aside partial decree no. 36-02659 set for Tuesday, February 18th, 2003 at 1:30 p.m. in the SRBA courtroom in Twin Falls, Idaho.

DATED this 10th day of February, 2003.

BARKER ROSHOLT & SIMPSON LLP


John K. Simpson
Travis L. Thompson

Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th of February, 2003, I served a true and correct copy of the foregoing *CLEAR SPRINGS FOODS, INC.'S MOTION TO PARTICIPATE and SUPPORTING MEMORANDUM and REQUEST FOR EXPEDITED HEARING* upon all parties listed on the Court's expedited mailing list by U.S. Mail, postage prepaid, and the following by facsimile:

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