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Department of Water Resources

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**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	)	Consolidated Subcase No. 75-13316
	)	Wild and Scenic Rivers Act Claims
	)	(Encompassing Subcases 75-13316,
	)	77-11941, 77-13844, 78-11961, 81-10472,
Case No. 39576	)	81-10513, and 81-10625)
	)	
_____	)	Quantification Proceedings

**CONSERVATION OBJECTORS' REPLY BRIEF ON NOTICE OF
PARTICIPATION/OBJECTIONS AND MOTION TO INTERVENE**

INTRODUCTION

On May 10, 2002, in accordance with the Court's scheduling Order of December 20, 2001, Objections were filed to the United States' amended Wild and Scenic federal reserved water right claims by SRBA claimants Thomas R. Stuart III, Gene Bray, Bonnie Schonefeld, Alma Marie Osborn, and Phyllis K. Kochert. The undersigned counsel also filed a Notice of Entry of Appearance on behalf of these individual claimants/objectors, as well as a Notice of Participation putting all parties on notice that they intend to participate in future proceedings in this matter.

At the same time, these individual claimants/objectors each filed affidavits stating the

REPLY BRIEF ON NOTICE OF PARTICIPATION AND MOTION TO INTERVENE -- 1

nature of their concerns about the amended Wild and Scenic claims, and stating that they want two conservation groups, Idaho Rivers United and The Wilderness Society, to represent their concerns and handle their objections in this matter, again through representation by the undersigned attorneys.

Although these individuals and the two groups (jointly, “Conservation Objectors”) believe that it is perfectly appropriate and consistent with extensive past SRBA experience for the organizations to represent these individual claimants’ positions as one group in this consolidated subcase, Idaho Rivers United and The Wilderness Society further moved for leave to intervene in this matter in order to file their own Objections, which were also timely submitted to the Court on May 10, 2002. This followed the instruction of the SRBA Court from back in April 20, 1993, when the Court entered an Order Denying Motion In The Adjudication Case, which denied several conservation groups a general motion to intervene in the SRBA and instructed them to file proposed Objections or Responses in specific proceedings with motions to intervene under Rule 24. See Order Denying Motion In The Adjudication Case (April 20, 1993)..

The Court set the above-referenced Motion to Intervene for hearing on June 18, 2002. The day before, the undersigned counsel received pleadings filed by (1) the State of Idaho, and (2) the “Federal Claims Coalition,” which consists of a number of Upper Snake irrigation districts all represented by the Barker, Rosholt & Simpson and the Rigby, Thatcher law firms. See “State of Idaho’s Memorandum In Opposition To Notice of Participation In Consolidated Subcase; and Motion To Intervene” (dated June 14, 2002); Federal Claims Coalition “Motion to Dismiss Objections of Idaho Rivers United, The Wilderness Society, Thomas R. Stuart III, Gene Bray, Bonnie Schonefeld, Alma Marie Osborn, and Phyllis K. Kochert And For Expedited Hearing,” and ‘Memorandum in Support Of Motion To Dismiss’ (dated June 14, 2002).

In these documents, the State of Idaho and Federal Claims Coalition object not only to

the Motion to Intervene by Idaho Rivers United and The Wilderness Society, but also to any participation by these two groups on behalf of the individual claimants/objectors. In addition, the State of Idaho and Federal Claims Coalition also move the Court to prevent participation even by the individual claimants/objectors, on grounds that their Objections supposedly are not proper under the SRBA statutes or rules.

Argument was conducted before the Court on June 18, 2002, and at that time the Court permitted the Conservation Objectors to file a reply brief in response to the State of Idaho and Federal Claims Coalition filings. Notably, at the hearing, the United States itself did not object to participation by the individual claimants/objectors or to participation and intervention by Idaho Rivers United and The Wilderness Society. Neither has any other party to this subcase advanced any objections to their participation or intervention.

As explained below, neither the State of Idaho nor the Federal Claims Coalition has advanced any meritorious reason for excluding any or all of the Conservation Objectors from this consolidated subcase. The individual claimants are entitled as a matter of right to object to the United States' amended Wild and Scenic Claims, and to present before the Court legal and factual challenges to how the federal government has quantified and asserted these federal reserved right claims. Moreover, nothing in the SRBA statutes or rules prevents the individuals from having larger groups represent their interests in their Objections, as has commonly been done by many different water user groups in the SRBA. Finally, intervention by Idaho Rivers United and The Wilderness Society is authorized under I.R.Civ.P. 24 and prior decisions of the Idaho Supreme Court and this Court.

Accordingly, the Court should overrule the State of Idaho and Federal Claims Coalition objections or motions to dismiss; and grant intervention to Idaho Rivers United and The Wilderness Society.

ARGUMENT:

I. THE INDIVIDUAL CLAIMANTS/OBJECTORS MAY PARTICIPATE AS A MATTER OF RIGHT IN THIS CONSOLIDATED SUBCASE

The State of Idaho and Federal Claims Coalition contend that even the individual claimants/objectors (Stuart, Bray, Schonefeld, Osborn and Kochert) may not participate in this consolidated subcase, because the Objections they have filed are somehow improper. This argument must be rejected as a matter of law.

A. The Objections Are Timely

First, in light of the Court's comments at the hearing on June 18th, it bears underscoring that the individual claimants timely filed their Objections to the United States' amended claims for the Wild and Scenic Rivers, consistent with the SRBA Rules of Procedure and prior orders of this Court.

As noted at the hearing, the United States originally filed its Wild and Scenic claims several years ago. Because these original filings appeared adequate and appropriate, the Conservation Objectors did not have any grounds to object to these original claims. Thereafter, of course, extensive litigation occurred in the SRBA Court, and then in the Idaho Supreme Court, over whether the Wild and Scenic Rivers Act created federal reserved rights.

When the Idaho Supreme Court confirmed that the Wild and Scenic Rivers Act did expressly create federal reserved water rights, see In Re SRBA/Potlatch Corp. v. United States of America, 134 Idaho 912, 12 P.3d 1256 (2000), the matter was remanded to quantify the amounts of those claims. Based on the SRBA Court and Idaho Supreme Court holding that the United States is only entitled to the minimum amounts of water necessary to fulfill the Wild and Scenic River designation purposes, the United States had to quantify what its claims were. By its order of December 20, 2001, the SRBA Court set a schedule for the United States to amend its claims in February 2002, and set May 10, 2002 as the deadline for filing of Objections to those amended claims.

Thus, the Conservation Objectors did not and could not have had notice that the United States would be seeking inadequate amounts of water under the Wild and Scenic claims until the amended claims were filed in February 2002. By filing their Objections on May 10, 2002, the Conservation Objectors were timely acting in response to the Court's earlier orders. Simply put, the Objections are timely.

B. The Individual Objectors May Participate As A Matter Of Right

The SRBA Rules of Procedure and statutes define a "party" to the SRBA as any claimant of a water right. I.C. § 42-1401A(1) & (7); SRBA Administrative Order 1, § 2.d & q. Any party may become a party to a subcase by filing a timely Objection or Response to a claimed water right. SRBA Administrative Order 1, § 2.p.

Because the individual Conservation Objectors named above (Stuart, Bray, Schonefeld, Osborn and Kochert) are each claimants in the SRBA (as attested in their affidavits, which identify their specific water right claims), they are thus by definition "parties" under the SRBA statutes and rules. As parties, they are entitled to file objections to any other water right claimed in the SRBA, provided they do so in a timely fashion (or have leave to file a late objection).

Because their Objections were timely under the Court's scheduling orders in this case, and because they are "parties" to the SRBA under I.C. § 42-1401A, the individual claimants/objectors are entitled to participate as a matter of right in this consolidated subcase. See In re SRBA Case No. 39576, Minidoka National Wildlife Refuge, 134 Idaho 106, 996 P.2d 806, 809-11 (2000) (holding that intervention of right in subcases to which a party has a generalized interest is timely in SRBA if filed within response period).

Indeed, neither the State of Idaho nor the Federal Claims Coalition contests these points – instead, they avoid them.

C. The Individuals' Objections Cannot Be Summarily Dismissed By The Court

Rather than claiming that the individuals' Objections are somehow untimely or

procedurally improper, the State of Idaho and Federal Claims Coalition argue that the Objections themselves are legally unsound and hence should be summarily dismissed by the Court. They assert that the Objections are not within the SRBA Court's "jurisdiction" because the Objections challenge the United States' quantification of the Wild and Scenic claims as being factually and legally insufficient.

For example, the State argues the Objections are improper because the "[o]bjections are permitted in the SRBA to prevent a claimant being awarded an excess amount of water. Because of the scarcity and finite nature of the resource, it is important that water rights be limited to actual need. The filings labeled 'objections' are not objections within the context of the SRA because they seek to force a claimant to claim **more** water than sought." State of Idaho's Memorandum, pp. 4-5 (emphasis in original). The Federal Claims Coalition makes similar arguments, and both the State and the Coalition cite Shoshone-Bannock Tribes v. Reno, 56 F.3d 1476 (D.C. Cir. 1995), to support their argument that the United States cannot be compelled to file claims for more water than it has sought.

These arguments fail because they mischaracterize both the SRBA and the Objections filed here. Notably, the State does not even cite a statute or rule for its proposition that an objection in the SRBA can only assert that a claimed quantity of water is too much, and not too little. The State does not cite any statute or rule for good reason, since the SRBA statutes actually contradict the State's position. The SRBA section dealing with federal water right claims, I.C. § 42-1411A, provides that "[a]ny claimant who desires to object to a claim established under federal law shall file an objection with the district court within the time specified," without any limitation on what the grounds for objection might be – and certainly without any limitation regarding objections to the quantity claimed. I.C. § 42-1411A(8).

Further, the statute provides that the "notice of claim, objections, and responses to an objection shall identify the issues to be litigated." I.C. § 42-1411A(9). Again, here the statute

establishes no limitation on the nature of objections that may be filed as to claimed federal water rights, but instead broadly provides that objections (along with notices and responses) will identify issues to be litigated – exactly what the Conservation Objectors have done here.

Additionally, in language that the State and Coalition totally overlook – and would have this Court violate – the SRBA statutes further provide that the “district court **shall conduct the trial** without a jury **on an objection or any group of objections** in accordance with the Idaho rules of civil procedure.” I.C. § 42-1411A(11) (emphasis added). Again, nothing in this part of the statute limits the nature of objections that may be filed; and to the contrary, the statute directs that the district court shall conduct a trial “on an objection” in accordance with the civil rules of procedure. Nothing in the civil rules of procedure limits the nature of objections that may be raised; and instead, the civil rules allow for trial of all relevant issues. Moreover, the statutory language “shall,” as used here, is mandatory language establishing the legislature’s intent that the district court must conduct trials over objections to federal claims, in accordance with the civil rules. See United States v. Monsanto, 491 U.S. 600, 607 (1989) (term “shall” communicates mandatory requirement); Pierce v. Underwood, 487 U.S. 552, 569-70 (1988) (same).

The State and Coalition thus seek to prevent the individual Conservation Objectors from exercising procedural and substantive rights to which they are entitled under the SRBA statutes – the right to object to federal claims, and to go to trial on their objections. Where they are statutorily defined as “parties” and “claimants” because of their individual water right claims in the SRBA; where the SRBA statutes and rules allow “claimants” and “parties” to file objections to other water rights, including federal water right claims; and where they exercised those rights by timely filing their Objections to the amended federal claims presented here, there is no statutory or other basis for the Court to now “dismiss” the Objections and deny participation in this subcase by the individual Conservation Objectors, as the State and Coalition request.

Further, the only case which the State and Coalition cite in seeking dismissal of the individuals' Objections, Shoshone-Bannock Tribes v. Reno, 56 F.3d 1476 (D.C. Cir. 1995), is not even applicable here. There, the Shoshone-Bannock Tribe filed a federal court mandamus-type action seeking to compel the United States, as trustee, to **file claims** for off-reservation water rights in the SRBA on behalf of the Tribe, when the United States had determined that it lacked adequate factual or legal basis to even file the claims. The district court, affirmed on appeal, declined to order the United States to file the claims, citing the doctrine of prosecutorial discretion and the fact that the United States had determined, consistent with Rule 11, that it lacked adequate basis to assert the claims. Notably, however, the appeals court specifically noted that while it would not order the United States to file the claims for the Tribe, the Tribe was not prevented from filing the claims in its own behalf. 56 F.3rd at 1477-78.

By contrast, here the Conservation Objectors are not seeking to compel the United States to do anything, much less file some claim on their behalf. What the Conservation Objectors do seek to do, through their Objections, is ensure that the **SRBA Court** adjudicates a legally and factual adequate and sufficient quantity of water for the federal reserved Wild and Scenic water rights – by ensuring that the decreed federal reserved water rights are legally adequate under the Wild and Scenic River Act (and individual river designations) and are factually supported by the record before the Court. Thus, if the United States errs as a matter of law in its reading of the Wild and Scenic Act and designations, as it apparently has in its amended claims, then the Conservation Objectors intend to so demonstrate to the Court. And if the United States has, as a factual matter, erred in how it developed its amended claims, then the Conservation Objectors intend to so demonstrate that to the Court as well.

Notably, this Court has recognized that this very process may be necessary in adjudicating the Wild and Scenic federal reserved rights. In an order issued last year, the Court noted that quantification of the reserved rights “is primarily a fact-driven issue,” but also

“depends on the purpose of the federal water reserve and is, therefore, unique to the individual federal law or resolution that reserved the federal water right. The purpose underlying the reservation will, in the first instance, define relevance and materiality of the evidence to be admitted in support of quantification.” Order Denying Motion To Participate, Subcase No. 79-13579 (Hells Canyon NRA) and No. 75-13316 (Wild and Scenic Rivers), dated April 23, 2001, pp. 6-7. It is precisely these type of issues – factual issues pertaining to the specific rivers, and legal issues relating to their designation under the Wild and Scenic Rivers Act – that the Conservation Objectors seek to present as parties in this matter.

In short, the final determination of the amount of the federal reserved Wild and Scenic rights is the Court’s province; and it will make that determination based on the pleadings (notices, objections, etc) filed by the parties, and the proof adduced at trial, under I.C. § 42-1211A. In making its final determination, the SRBA Court’s decree must be legally consonant with the Wild and Scenic River Act and the individual river designations by Congress; and it must be factually sound. The Conservation Objectors simply seek to ensure that the final decree for the Wild and Scenic Rivers is consistent with federal law and the relevant facts, not somehow to compel the United States to file claims on their behalf, as the State and Coalition seem to believe.

Accordingly, the Court should reject this effort by the State and Coalition to “dismiss” the individual claimants’ Objections that are permitted by, and perfectly consistent with, the SRBA statutes.

II. THE CONSERVATION OBJECTORS MAY PURSUE THEIR OBJECTIONS THROUGH THE DESIGNATED ORGANIZATIONS

Neither do the State and Coalition have any legal basis for objecting to the two conservation groups, Idaho Rivers United and The Wilderness Society, representing the interests of the individual Conservation Objectors in this matter, as the individuals have requested in their affidavits.

Again, neither the State nor the Coalition cites any statute or rule which would prohibit individual SRBA claimants from having some larger association or group represent their interest in a particular subcase or other SRBA proceeding. Certainly no such prohibition appears in the SRBA statutes, or in the SRBA Rules of Procedure.

Indeed, as this Court is aware, it has been very common practice for individual water users in the SRBA to have larger groups or associations represent their interests in a variety of SRBA proceedings, including basin-wide issues and specific subcases. See, e.g., Fremont-Madison Irrigation Dist. And Mitigation Group v. Idaho Ground Water Appropriators, Inc., 129 Idaho 454, 926 P.2d 1301 (1996) (participation of non-claimant Idaho Ground Water Appropriators, Inc. on behalf of claimants); In Re SRBA Case No. 39576, Basin Wide Issue #5A, 131 Idaho 329, 955 P.2d 1108 (1998) (including non-claimant Payette River Water Users Association in subcase on behalf of claimants); State v. Hagerman Water Right Owners, Inc., 130 Idaho 727, 947 P.2d 400 (1997) (participation by non-claimant Hagerman Water Right Owners on behalf of claimants). So long as the individuals have properly authorized the larger group to represent their interests – as has been demonstrated here, with the filing of the individuals affidavits – the Court and other parties should not care whether individuals seek to avoid expense and burden by having a larger group sharing the same interests handle their objections for them.

In the absence of any statutory prohibition and without even acknowledging that this is common practice in the SRBA, the only authority that the State or Coalition do cite is In Re SRBA/Fort Hall Water Users Ass'n v. United States, 129 Idaho 39, 921 P.2d 739 (1996). There, the Idaho Supreme Court affirmed the SRBA Court's dismissal of objections that the Fort Hall Water Users Ass'n attempted to file against the 1990 Fort Hall Indian Water Rights Agreement. But the facts and procedural posture of that case were very different than this. There, the Fort Hall Water Users Ass'n attempted to portray itself as a "claimant" and hence a

“party” to the SRBA under the SRBA statutes, entitled to file objections. Yet, as the Idaho Supreme Court noted, the Association was neither a “claimant” nor a “party” because it had not filed any notice of claim in the SRBA: “It is undisputed that the [Association] did not file a notice of claim for the water rights that are the subject of the Agreement.” Moreover, the Court rejected the argument that the Association was a “claimaint” and “party” because the United States had supposedly filed a notice of claim on its behalf: “The notices of claim for the water at issue were filed by the United States as the ‘claimant.’ The United States did not assert ownership of the water rights on behalf of the Association.. . . The United States is therefore the claimant with respect to these water rights.” *Id.* Thus, because it was not a water right claimant or party in the SRBA, the Association’s attempt to file an objection was denied.

Here, by contrast, the individual Objectors are indisputably water right claimants in the SRBA, and hence “parties” under the SRBA statutes and the Fort Hall Water Users Ass’n decision. Nowhere in the Fort Hall decision does the Idaho Supreme Court in any way suggest that proper claimants may not have their interests represented in specific SRBA proceedings (such as this consolidated subcase) by a larger organization. And the Court’s implicit affirmance of this practice in cases such as Eremont-Madison and others cited above further supports the right of the Conservation Objectors to follow that practice here. Accordingly, the State’s and Coalition’s objections to the Notice of Participation should be denied.

III. IDAHO RIVERS UNITED AND THE WILDERNESS SOCIETY MAY ALSO INTERVENE

Finally, the State and Coalition (but, again, not the United States) have opposed the Motion to Intervene filed by Idaho Rivers United and The Wilderness Society, contending that they may not intervene at all since they claim no water rights; and that, in any event, they do not meet all prongs of the tests for intervention by right or permissive intervention under Rule 24.

It bears underscoring that Idaho Rivers United and The Wilderness Society seek an order

of this Court granting them intervention, so that they may file Objections in their own names in this consolidated subcase. Again, this follows the practice directed by Judge Hurlbutt in 1993, when he instructed conservation groups seeking to participate in the SRBA that they needed to file a motion to intervene in specific subcases or other proceedings (like basin-wide issues), accompanied by a proposed Objection, Response or other appropriate pleading. *See* Order Denying Intervention In The Adjudication Case (April 20, 1993). This direction is fully consistent with I.R.Civ.P. 24, of course, which directs that a motion to intervene be accompanied by the proposed pleading that the intervenor seeks to file. *See also Fort Hall Water Users Ass’n, supra* (holding that notices of claims, objections and responses comprise the “pleadings” for the water rights adjudication under the Idaho Rules of Civil Procedure).

For reasons discussed above, Idaho Rivers United and The Wilderness Society may represent the interests of the individual claimants/objectors who have asked the groups to handle their interests in this matter for them. But that participation does not give the groups, themselves, the legal rights that follow from formal party status – such as rights of appeal in their own names. In order to obtain the benefits of full party status, then, Idaho Rivers United and The Wilderness Society have proffered their own proposed Objections and moved to intervene under I.R.Civ.P. 24.

The State and Coalition first object to this motion by citing the SRBA statutes to assert that only water right claimants may participate in the SRBA, and thus conservation groups that do not claim water rights cannot. Certainly it is true that the SRBA statutes define who are “claimants” and hence “parties” to the SRBA. *See* I.C. § 42- 1401A(1) (defining “claimant”) and 1401A(7) (defining “party”). But the analysis does not stop there. The SRBA statutes

further direct that the adjudication is to proceed in conformance with the Idaho Rules of Civil Procedure. See I.C. § 42-1411A(11), § 42-1412(5). This necessarily includes Rule 24, allowing for intervention in civil proceedings.

Indeed, since 1993 when conservation groups first began moving to intervene in various aspects of the SRBA, neither the SRBA Court nor the Idaho Supreme Court has held that intervention was somehow precluded under the SRBA statutes. To the contrary, as noted, Judge Hurlbutt denied general intervention to a number of conservation groups (including Idaho Rivers United) in 1993, but directed that they file motions to intervene with proposed pleadings in specific SRBA proceedings or subcases, in order to demonstrate their interests, why intervention should be allowed, and otherwise fulfill the requirements of Rule 24. As noted at argument, and in our opening brief, since 1993 conservation groups have been granted intervention in a number of SRBA proceedings; and denied intervention in others. See, e.g., A&B Irrig. Dist. v. Idaho Conservation League, Idaho Rivers United, et al., 131 Idaho 411, 958 P.2d 518 (1998) (conservation groups granted intervention in Basin Wide Issue No. 5); State of Idaho v. Idaho Conservation League, Idaho Rivers United et al., 131 Idaho 329, 955 P.2d 1108 (1998) (conservation groups granted intervention in Basin Wide Issue No. 5A, re Reynolds Creek decree); In re SRBA/Idaho Conservation League, Idaho Rivers United et al v. State of Idaho et al., 127 Idaho 688, 911 P.2d 748 (1995) (conservation groups denied intervention to raise public trust doctrine). Nowhere in any of these decisions has the SRBA Court or the Idaho Supreme Court ever suggested that conservation groups are precluded from intervening in the SRBA at all. Thus, the State's and Coalition's arguments on this ground must be rejected.

The groups here also meet all tests for intervention in this proceeding, under Rule 24. As

discussed above, their proposed intervention is “timely” under the first prong of Rule 24, because the groups have followed the Court’s own scheduling order in submitting their proposed Objections to the amended United States claims within the May 10, 2002 deadline set by the Court. Prior to the amendment of the United States claims in February 2002, the conservation groups did not know what the United States might do in terms of quantifying its Wild and Scenic claims, following the Idaho Supreme Court’s decision and remand; and prior to the amendment of the claims, it appeared that the United States was adequately pursuing them. Only in February 2002 did it become apparent that the United States was seeking less water for the Wild and Scenic Rivers than is required by the Wild and Scenic River Act and the specific river designations. By moving to intervene within the May 10th deadline for objections to these amended claims, the conservation groups have come forward as timely as they possibly could have.

The same considerations also demonstrate why the groups also meet the “inadequate representation” requirement for intervention under Rule 24 (another issue raised by the State and Coalition). Prior to when the United States filed its amended claims in February 2002, it did appear that the federal government was adequately pursuing the Wild and Scenic reserved rights claims. But when the United States filed amended claims seeking far less water than has historically flowed down the designated Wild and Scenic Rivers, and far less water than is necessary to maintain their “outstandingly remarkable values” under the Wild and Scenic Act and designations, then it became clear that the United States was **not** adequately representing the interests of the Conservation Objectors.

In asserting that the United States does adequately represent the Proposed Intervenor’s interests, the State and Coalition would essentially have the Court determine that the amended

United States claims are adequate – in effect, adjudicating the merits of the issue in order to deny intervention by the conservation groups. But that is not how intervention works under Rule 24. Intervention is intended to allow interested parties to participate in the merits of the adjudication so that their voices will be heard in a timely fashion. Where Idaho Rivers United and The Wilderness Society have now come forward to object that the United States’ amended claims are not adequate legally or factually under the Wild and Scenic Rivers Act, that alone shows inadequate representation that cannot be papered over by the State’s breezy assurances that the United States adequately represents the conservation community here.

Finally, the State and Coalition contend that intervention should be denied because Idaho Rivers United and The Wilderness Society have no particular interest in the quantification of the Wild and Scenic reserved rights. According to the State and Coalition, the conservation groups and their members have no greater or different interest in the determination of Wild and Scenic rights than any member of the general public, or than taxpayers generally. *See* State of Idaho Memorandum, pp. 6-12; Coalition Brief, pp. 17-19.

This contention is particularly specious. The Proposed Intervenors have filed specific, detailed affidavits from staff and members demonstrating their acute and particularized interests in the quantification of federal reserved Wild and Scenic water rights claims. *See* Affidavits of Craig Gehrke, Sara Eddie, Thomas Stuart, Gene Bray, Bonnie Schonefeld, Peter Grubb, Joseph Daly, Phyllis Kochert and Alma Osborn. These affidavits include the statements of business owners and commercial outfitters who use and rely on Idaho’s designated Wild and Scenic Rivers for their income and livelihood (Stuart, Grubb, Daly, Schonefeld Affidavits), and who are concerned that inadequate Wild and Scenic federal reserved rights will allow diminished river

flows that will harm their businesses. Other are water right holders who use and enjoy the designated Wild and Scenic Rivers themselves, for recreational and aesthetic purposes (Bray, Schonefeld, Kochert Affidavits) – something that surely even the State would acknowledge is not something the “general public” or all taxpayers do. Others testify about the long-standing interests and advocacy efforts of Idaho Rivers United and The Wilderness Society in protecting the Wild and Scenic River and ensuring that their “outstandingly remarkable values” remain protected for future generations (Eddie, Gehrke Affidavits).

In light of this factual showing of the particularized interests of Idaho Rivers United, The Wilderness Society and their members in this matter, the State’s and Coalition’s objections must be rejected. The Conservation Groups amply meet all tests for intervention, and their participation in this matter will ensure that the Court is fully apprised of all relevant legal principles and facts. Hence, their Motion to Intervene should be granted.

.CONCLUSION

For the foregoing reasons, and for the reasons previously set forth in briefings and oral argument before the Court, the Conservation Objectors respectfully pray that: (1) the objections and motions to dismiss by the State of Idaho and Federal Claims Coalition be denied, and (2) the Court grant intervention to Idaho Rivers United and The Wilderness Society and permit them to file the proposed Objections presented on May 10, 2002.

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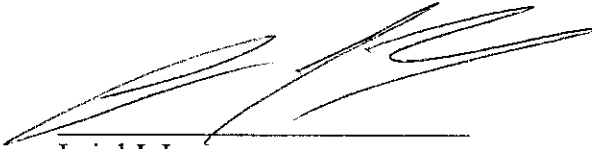
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Dated: June 26, 2002

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing CONSERVATION OBJECTORS
REPLY BRIEF was served on June 26, 2002, via the method of service noted below:

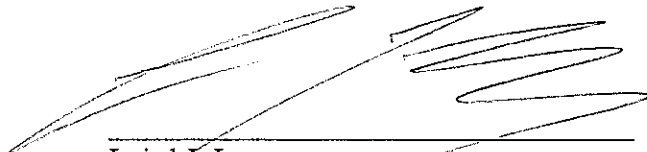
Original, Via Federal Express, Next Day Delivery:

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All counsel or parties listed on Certificate of Mailing for Wild and Scenic River
Act Claims dated February 6, 2002 (attached hereto).



Laird J. Lucas