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3 Roger D. Ling, ISB No. 1018
4 Michael P. Tribe, ISB No. 6816
5 Ling, Robinson & Walker
6 615 H Street
7 P. O. Box 396
8 Rupert, Idaho 83350-0396
9 Telephone (208) 436-4717
10 Facsimile (208) 436-6804

11 Attorneys for Norman L. Smyer and Delores J. Smyer

12
13 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**
14 **STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

15 In Re SRBA)

Subcase No. 45-10502

16 Case No. 39576)

MOTION TO PARTICIPATE

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18 Norman L. Smyer and Delores J. Smyer ("Smyers"), by and through their attorney
19 Michael P. Tribe of the firm Ling, Robinson & Walker, moves to participate in the above-
20 captioned proceeding. This Motion to Participate is filed pursuant to SRBA Administrative
21 Order # 1 (A.O.1) §10k, which provides that any party to the adjudication who is not a party to a
22 subcase may seek leave to participate in a subcase by filing a timely Motion to Participate. A
23 Motion to Participate shall be treated like a motion to intervene under I.R.C.P. 24 and shall be
24 decided by the Presiding Judge or the assigned Special Master.

25 1. **Status as a party.**

26 Under I.R.C.P 24, upon timely application any party shall be permitted to

27 MOTION TO PARTICIPATE

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3 intervene in an action when the applicant claims an interest relating to the property or transaction
4 which is the subject of the action and the applicant is so situated that the disposition of the action
5 may as a practical matter impair or impede applicant's ability to protect that interest, unless the
6 applicant's interest is adequately represented by existing parties.

7
8 Earl Warthen owns water right no. 45-10502 to which he claims a priority date of
9 August 31, 1874; the Idaho Department of Water Resources has recommended a priority date of
10 May 26, 1964 to which Warthen has objected. Warthen's right permits him to divert water from
11 Spring Creek for irrigation. If Warthen is granted the 1874 priority date, it would interfere with
12 the Smyers' right to use water right no. 45-12906, which grants the Smyers the right to divert
13 water from Spring Creek for irrigation with a priority date of March 18, 1910.

14 **2. Right to Participate.**

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16 Because they are so situated that the disposition of the action in water right no.
17 45-10502, as a practical matter, would impair their ability to protect their interest in water right
18 no. 45-12906, unless their interest is adequately represented, the Smyers have an interest in water
19 right no. 45-10502. No other party to the proceeding represents the Smyers' interests and they
20 will lose their ability to exercise their rights under 45-12906, if Warthen's succeeds in his
21 objection and is granted the 1874 priority date. The Smyers have used and currently use water
22 right no. 45-12906 to irrigate certain portions of their land. The Smyers desire to participate in
23 these proceedings to protect their interest in water right no. 45-12906 and to participate in
24 establishing that Warthen's priority date on water right no. 45-10502 is properly 1964.
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3 **3. Conclusion.**

4 By reason of the above and foregoing, this Court should not determine the
5 controversy now before it without the Smyers' participation because full and complete justice may
6 not be done without the presence of the Smyers as a party and because the Smyers' ability to
7 protect their interest in their water right may be impaired if they are not entitled to participate in
8 this matter.

9
10 Therefore, the Smyers respectfully request that this Motion to Participate be
11 granted and that they be allowed to participate as a party in these proceedings.

12 DATED this 13th day of June 2005.

13 LING, ROBINSON & WALKER

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15 By: Michael P. Tribe
16 Michael P. Tribe
17 Attorneys for Norman L. Smyer
18 and Delores J. Smyer

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20
21 **CERTIFICATE OF MAILING**

22 I hereby certify that on the 13th day of June, 2005, I served the original of the
23 foregoing *Motion to Participate* upon:

24 Clerk of the District Court
25 Snake River Basin Adjudication
26 253 Third Avenue North
27 PO Box 2707
28 Twin Falls, ID 83303-2707

MOTION TO PARTICIPATE

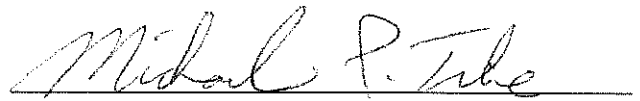
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3 and copies of said *Motion to Participate* upon:

4 IDWR Document Depository
5 P. O. Box 83720
6 Boise, Idaho 83720-0098

7 Chief, Natural Resources Division
8 Office of the Attorney General
9 State of Idaho
10 P. O. Box 44449
11 Boise, Idaho 83711-4449
12 The United States Department of Justice
13 Environment and Natural Resources Division
14 550 West Fort Street, MSC 033
15 Boise, Idaho 83724

16 Shelly M. Davis
17 Barker Rosholt & Simpson, LLP
18 205 N. 10th Street, Ste. 520
19 Boise, ID 83701-2139
20 Attorneys for Earl Warthen

21 by depositing said document in the United States mail, postage prepaid, in envelopes addressed
22 to said parties at the foregoing addresses.

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Michael P. Tribe