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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

Case No. 39576

Subcase: 63-27475

**MEMORANDUM IN SUPPORT OF PIONEER
IRRIGATION DISTRICT'S MOTION TO
PARTICIPATE**

COMES NOW Pioneer Irrigation District ("Pioneer"), by and through its counsel of record, MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, and files this Memorandum in Support of Pioneer Irrigation District's Motion to Participate in accordance with Idaho Rule of Civil Procedure 24(c).

**I.
BACKGROUND**

On April 26, 2005, the Idaho Department of Water Resources ("IDWR") issued its recommendation for water right no. 63-27475 owned by Janicek Properties, LLC ("Janicek").

On April 20, 2006, the Nampa & Meridian Irrigation District ("NMID") objected to IDWR's recommendation for water right claim no. 63-27475. NMID objected to IDWR's recommendation on the basis that the source of water right claim no. 63-27475 is a drain owned and operated by NMID, that such water is not subject to appropriation and, therefore, water right claim no. 63-27475 should not exist. More specifically, NMID objected to water right claim no. 63-27475 as follows:

The claimed water right is within the boundaries of Nampa & Meridian Irrigation District ("NMID") and the source of said claim is a drain which was constructed or enlarged by or for NMID. Said drain is owned, operated, maintained and controlled by NMID and the water within said drain is seepage or waste water that has been developed, captured and/or controlled by NMID. Therefore, said water is not subject to appropriation, would amount to an impermissible trespass, and this claimed water right should not exist.

Nampa & Meridian Irrigation District, Objection, Subcase No. 63-27475, April 20, 2006.

Similarly, NMID has objected to several water rights held by Pioneer regarding the use of drain water and NMID's right to recapture such water. Specifically, NMID objected to the following Pioneer water rights involving drain water: 63-2114, 63-2275, 63-2276, 63-2294, 63-2891, 63-5219, 63-5237, 63-5255, 63-21731, 63-21739, 63-32514, and 63-32515. Due to the multiple water rights objected to by NMID on grounds similar to those at issue in the above-captioned matter, the decision in this case is likely to have a substantial impact on Pioneer's water rights identified above. Therefore, Pioneer has an interest in common questions of law and fact in this matter and should be allowed to participate by this Court.

II. STANDARD OF REVIEW

Idaho Code Section 42-1412(2), provides that “any party may intervene in any objection proceeding in accordance with rules of practice and procedure established by the district court.” In addition, Administrative Order 1 (“AO1”), §10(K), provides that:

[a]ny party to the adjudication who is not a party to a subcase may seek leave to participate in a subcase by filing a timely *Motion to Participate*. A *Motion to Participate* shall be treated like a motion to intervene under I.R.C.P. 24 and shall be decided by the Presiding Judge or the assigned Special Master.

AO1, §10(K) (emphasis original). Under Idaho Rule of Civil Procedure 24, a party seeking to participate in an action may seek either to intervene as a matter of right or on a permissive basis, which is more appropriate under the present circumstances. Idaho Rule of Civil Procedure 24(b) allows for permissive intervention and provides in pertinent part as follows:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) *when an applicant’s claim or defense and the main action have a question of law or fact in common*.

In exercising its discretion the court shall consider whether the intervention will *unduly* delay or prejudice the adjudication of the rights of the original parties.

I.R.C.P. 24(b) (emphasis added). A district court’s decision to grant or deny permissive intervention is reviewed by an abuse of discretion standard. *American Falls Reservoir v. Dept. of Water*, 143 Idaho 862, 882, 153 P.3d 433, 453 (2007). The decision of a district court will be affirmed as within its discretion if the district court properly perceives the issue as discretionary, acts within the outer boundaries of its discretion and consistently with applicable legal standards, and reaches its decision by an exercise of reason. *Id.*

III. ARGUMENT

A. Pioneer Is Entitled To Permissive Intervention In This Matter Under I.R.C.P. 24(b)

1. Pioneer's Motion To Participate In This Matter Is Timely

To determine whether the filing of a motion to participate is timely, the Idaho Supreme Court utilizes a three-part test. When considering the timeliness of a motion to participate, the court considers the following:

- (1) the stage of the proceeding at which an applicant seeks to intervene;
- (2) the prejudice to the other parties; and
- (3) the reason for and length of delay.

Farrell v. Pocatello, 138 Idaho 378, 390, 64 P.3d 304, 316 (2002) (citing *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996)).

In the present case, Pioneer only recently determined its need to participate in this matter following the full development of all the relevant issues. As a result, Pioneer could not have reasonably sought to participate in this matter sooner, and its motion to participate at this point in the proceedings is appropriate. Further, as the party seeking to participate, Pioneer accepts the posture of the case as it exists if participation is granted. Currently, the original parties have stipulated to rescheduling the proceedings in order to allow for more time, which has moved the trial date to May 21, 2008. In addition, this matter has undergone limited substantive progress. Specifically, the parties only completed their initial discovery last month, they have not conducted any supplemental discovery, and the discovery period does not end until April 21, 2008. Moreover, Janicek filed a motion for summary judgment which the non-moving parties only recently submitted their responses to within the past few weeks, and the hearing on

that motion is not scheduled to take place until April 16, 2008. As a result, Pioneer's participation in this matter represents little potential for any unreasonable delay or prejudice to the original parties. Therefore, this Court should consider Pioneer's motion timely due to the fact that it comes at an appropriate time during the proceedings and will not cause any unreasonable delay or prejudice in light of the existing scheduling and lack of substantive progress in this subcase.

B. Pioneer's Claim And The Main Action Share Common Questions Of Law And Fact

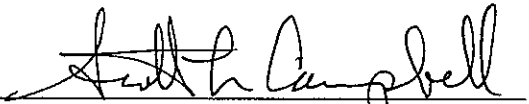
Idaho Rule of Civil Procedure 24(b)(2) requires that the claim or defense of the applicant seeking to participate and the main action have a question of law or fact in common. In this subcase one of the central issues is the right to use and ownership of drain water. As stated previously, Pioneer has several water rights involving drain water that NMID has objected to on a basis similar to that upon which NMID objected to water right no. 63-24745. As a result, Pioneer's claims share common questions of law and fact regarding drain water rights, particularly because the outcome of this subcase will likely have an impact on Pioneer's water rights. As a result, Pioneer's participation in this matter is warranted. Further, if Pioneer is prohibited from participating in the above-captioned matter, Pioneer may be subject to an adverse decision without an opportunity to advocate for its position.

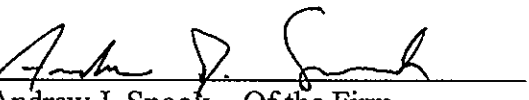
**IV.
CONCLUSION**

Therefore, based on the reasons set forth above in this memorandum, Pioneer respectfully requests that this Court grant its Motion to Participate in this subcase pursuant to Idaho Rule of Civil Procedure 24(b).

DATED this 26th day of March, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm

By 
Andrew J. Snook – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2008, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S MOTION TO PARTICIPATE** to be served by U.S. Mail, postage prepaid, to the parties on the SRBA Expedited Service List, and to the parties listed below by the method indicated:

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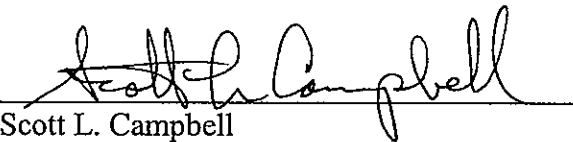
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