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DEPARTMENT OF
WATER RESOURCES

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Attorneys for City of Boise

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: **63-05354**

**MOTION FOR LEAVE TO FILE
AMENDED OBJECTIONS AND
MEMORANDUM IN SUPPORT**

Claimant/Objector City of Boise ("City"), a body politic of the State of Idaho, by and through its counsel of record, Perkins Coie LLP, hereby moves the Court pursuant to Rule 1 a & b of Snake River Basin Adjudication ("SRBA") Administrative Order 1 ("AO1") and Rule 15(a) of the Idaho Rules of Civil Procedure ("IRCP") for Leave to File Amended Objections and Memorandum in Support. A copy of the Amended Objections is attached hereto as "Exhibit A" and incorporated herein by reference.

MEMORANDUM IN SUPPORT

A. Background

The City timely filed a Notice of Claim to a Water Right ("Notice") for the above-referenced water right/subcase, claiming municipal use and municipal place of use for

diversion of .18 cfs of groundwater from three (3) points of diversion. The Idaho Department of Water Resources ("IDWR") Director's Report recommended that water right number 63-05354 be partially decreed for domestic use with a diversion rate of .18 cfs limited to 13,000 gallons per day. The Director's Report did not identify a place of use for this water right.

The City timely filed objections to the Director's Report as to the point of diversion and place of use elements. Although the City did not specifically object to the purpose and quantity of use,¹ the City's Notice claimed municipal purpose of use and the City verbally notified IDWR of its objection to the domestic purpose of use recommendation at the June 20, 2008 Initial Hearing. Recently, the City was able to confirm that the Director's Report correctly identifies the three (3) points of diversion associated with water right number 63-05354. IDWR has expressed a willingness to continue discussions with the City based on the content of the City's Amended Objections. There are no pending substantive deadlines or trial date set for this subcase.

B. Applicable Law

IRCP 15(a) provides that leave to amend or supplement a pleading shall be "freely given when justice so requires." In granting a motion to file amended objections, the SRBA Court acknowledged that "Rule 15(a) established a rather lenient legal standard for amending pleadings." *In Re: SRBA Case No. 39576 (Subcase 37-154C et. al.) Re: Order Granting Motion to Amend Objections*, p. 4 (October 10, 2008). The purpose of IRCP 15(a) is "[f]irst, to allow the best chance for each claim to be determined on its merits rather than on some procedural technicality; and, second, to relegate pleadings to the limited role of providing

¹ The quantity is necessarily at issue because there is generally no gallon per day or acre feet per annum limitation for municipal-use water.

parties with notice of the nature of the pleader's claim and to the facts that have been called into question." *Clark v. Olsen*, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986)(external citations omitted).

C. Argument

In this subcase, the City timely filed its Notice and objections and has engaged in several discussions with IDWR centered on resolution of the purpose of use element. The Amended Objections simply provide clarity for the administrative record in this subcase and do not constitute new information. Allowing the Amended Objections will enable this water right to be adjudicated properly on its merits, which is consistent with IRCP 15(a), case law interpreting it, and the SRBA. IDWR, although not a party that can be prejudiced in the first instance, was given timely notice of the City's objections to the purpose of use element. Accordingly, the Amended Objections should come as no surprise to IDWR.

The City's position has been consistent that the water right at issue is a municipal water right and should be partially decreed as such. By allowing the Amended Objections, the Court, City and IDWR will be better able to focus on resolving the contested elements of water right number 63-05354. The City makes this Motion in good faith and without intent to cause undue delay.

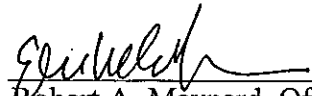
D. Conclusion

Justice requires this Court to grant the City's Motion because (1) the City made IDWR aware of these additional or amended objections at the Initial Hearing and at every opportunity thereafter; (2) the record should be clarified to accurately reflect the elements of water right number 63-05354 at issue; (3) there are no pending deadlines at this time; and (3) no prejudice will occur to any party because the City is the only party to this subcase. The

City is not requesting oral argument. Counsel for the City has contacted counsel for IDWR and IDWR does not oppose this Motion.

DATED: November 14th, 2008

PERKINS COIE LLP

By: 
Robert A. Maynard, Of the Firm
Erika E. Malmen, Of the Firm
Attorneys for City of Boise

CERTIFICATE OF SERVICE

I, the undersigned, certify that on November 14th, 2008, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Procedure, to the following person(s):

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 736-2121 ☐
Overnight Mail ☐

Director
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 287-6700 ☐
Overnight Mail ☐

State of Idaho
c/o Natural Resources Div. Chief
Attorney General's Office
P.O. Box 44449
Boise, Idaho 83711-4449

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 334-2690 ☐
Overnight Mail ☐



Erika E. Malmen

Exhibit A

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

A. Subcase No: 63-05354

AMENDED OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTION

Name: City of Boise, Dept. of Aviation & Public Transportation

Address: P.O. Box 500, Boise, Idaho 83701

Name & Address of Attorney, if any:

Robert A. Maynard
Erika E. Malmen
Perkins Coie LLP
251 East Front Street, Suite 400
Boise, Idaho 83702-7310
Telephone: (208) 343-3434

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: City of Boise, Dept. of Aviation & Public Transportation

Address: P.O. Box 500, Boise, Idaho 83701

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be:

2. ☐ Source
Should be:

3. ☒ Quantity
Should be: .18 cfs with no gpd/AFA limitation.

4. ☐ Priority Date
Should be:

5. ☐ **Point of Diversion**
Should be:
6. ☐ **Instream Flow Beginning and Ending Point**
Should be:
7. ☒ **Purpose(s) of Use**
Should be: Municipal.
8. ☐ **Period of Year**
Should be:
9. ☒ **Place of Use**
Should be: Identified as the Boise City Municipal Service Area.
10. ☐ **I object because:**
☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

There is no basis for the 13,000 gal/per day limitation and such limitation is inappropriate for a municipal water right. The City purchased the property in 1986 and holds the appurtenant water right for municipal use. Accordingly, the purpose of use should be recommended as municipal pursuant to applicable law.

The recommendation does not identify a place of use ("POU"). The POU should be identified as the Boise City Municipal Service Area.

DATED: November 14th, 2008

PERKINS COIE LLP

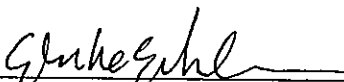
By: 
Robert A. Maynard, Of the Firm
Erika E. Malmen, Of the Firm
Attorneys for City of Boise and
Ada County

F. VERIFICATION (must be completed)

STATE OF IDAHO)
 : ss.
County of Ada)

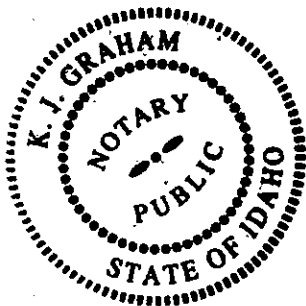
Erika E. Malmen, duly sworn, upon oath, deposes and says:

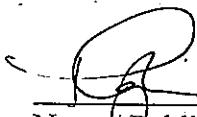
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Erika E. Malmen

SUBSCRIBED AND SWORN to before me this 14th day of November, 2008.





Notary Public for Idaho
Residing at Meridian, Idaho
My Commission Expires February 5, 2013