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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 Nos.: 29-00271, et al.
(See Attached Exhibit A)

**UNITED WATER IDAHO, CITY OF
NAMPA, AND CITY OF BLACKFOOT'S
MOTION FOR LEAVE TO PARTICIPATE
OR TO PARTICIPATE AS AMICI
CURIAE; STATEMENT IN SUPPORT OF
MOTION FOR LEAVE; REQUEST FOR
HEARING; AND MOTION FOR
SHORTENING OF TIME**

MOTION FOR LEAVE

This motion is filed pursuant to section 10.k of AO1 on behalf of United Water Idaho, the City of Nampa, and the City of Blackfoot (collectively, "Providers"). Providers move for leave to participate in this subcase or, in the alternative, to appear as amici curiae. Their brief on the merits is lodged simultaneously with the filing of this motion.

STATEMENT IN SUPPORT OF MOTION FOR LEAVE

Providers are providers of municipal water to customers within their respective service areas. The City of Pocatello ("Pocatello") is challenging a condition relating to "alternative

points of diversion” imposed on its municipal water rights by the Idaho Department of Water Resources (“IDWR”) in its recommendations.

In response to Pocatello’s challenge, the Special Master recommended that the condition be retained as recommended by IDWR (decisions of October 2, 2007, October 30, 2007 and May 28, 2008). Pocatello has challenged those decisions in the case now before the Court.

The disposition of this challenge will affect Providers’ interests as a practical matter, and their interests are not adequately represented by the parties to this challenge. The precedent set by this challenge will apply directly to Providers whose water rights are subject to identical “alternative points of diversion” conditions.¹ Providers did not object to those conditions in their own water rights based on their clear understanding of the meaning and limited effect of that conditional language. Providers are now concerned, however, that an interpretation of the language could be rendered by this Court that is at odds with Providers’ understanding of how those conditions will operate. This is not a “generalized interest.” This could have serious and unintended consequences directly affecting how Providers’ water rights would be administered in the event of conjunctive administration. Accordingly, Providers believe it would be valuable for the Court to be informed of the assumptions and understandings under which Providers operated in their decision not to appeal the conditional language. In particular, the distinction between how the condition will operate differently under three scenarios (well interference, regional administration, and geographically-limited administration) was not articulated in the decision below.

¹ As this Court noted in its *Order Denying Motion to Participate; Order Allowing Amicus Curiae Participation on Legal Issues* in Subcase No. 79-13597 and Consolidated Subcase No. 75-13316 (Apr. 2001) at 6, “Legal precedence is a recognized ground for allowing intervention as a matter of right or by permission.”

This motion is timely under section 10.k of AO1 and I.R.C.P. 24 (which is incorporated by reference in section 10.k). Providers did not seek to participate in the matter before the Special Master because they did not object (or plan to object) to similar conditions in their water rights. Providers believe that the Special Master's decisions on Pocatello's challenge is consistent with Providers' understanding of how the conditions will operate. Those decisions, however, contain some ambiguity that have caused concern. The pending challenge presents a sensible and timely opportunity for Providers to provide input to the Court and to seek clarification as to how the conditions will operate, if they are retained by the Court.

Providers will address only the "alternative points of diversion" issue. They will not address any of the other issues that may be included within Pocatello's challenge.

There will be no prejudice. Providers have worked closely with both Pocatello and the State in preparing this brief. In order to avoid any surprise or misunderstanding, Providers made available to both Pocatello and the State a complete draft of the brief on March 2, 2009. In order to further assure no prejudice, a copy of the proposed brief will be lodged simultaneously with this motion, well in advance of the date set for filing of the opening brief on April 22, 2009.

For these reasons, Providers respectfully move this Court for leave to participate in the City of Pocatello's challenge or, in the alternative, to participate as amici curiae.

If the Court determines that full participation is not appropriate, but that participation as amici curiae is appropriate, we ask that the brief submitted herewith be deemed an amici curiae brief.

Providers are authorized to state that the State does not oppose this motion. The City of Pocatello has declined to consent to this motion.

REQUEST FOR HEARING

Providers request that this motion be set for hearing prior to April 22, 2009, the date of the opening brief in this matter.

MOTION FOR SHORTENING OF TIME

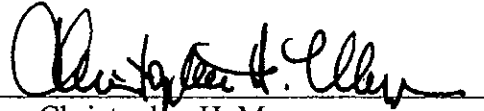
Providers move for shortening of the time allowed for responding to this motion in order that it may be heard prior to April 22, 2009. Providers learned only yesterday from counsel for Pocatello that Pocatello would oppose this motion.

DATED April 10, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "Christopher H. Meyer", written over a horizontal line.

Christopher H. Meyer
John M. Marshall

Exhibit A

Subcase Nos:

29-00271
29-00272
29-00273
29-02274
29-02338
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07322
29-07375
29-07450
29-07770
29-11339
29-11348
29-13558
29-13559
29-13560
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29-13637
29-13638
29-13639

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 10, 2009, the foregoing was filed, served, or copied as follows:

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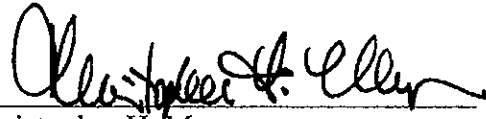
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