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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

Subcase Nos. 22-13586, 22-13854

Case 39576

MOTION TO PARTICIPATE

Cedron Irrigation, LLC, Mahogany Ranch Holdings, Teton Rainbow Ranches, Inc., Trees, Inc., and Wally Rothgeb, Jr. (collectively, the "Movants"), by and through counsel, respectfully move the Court pursuant to SRBA Administrative Order 1 ("AO1") §10.k and Rule 24(a) of the Idaho Rules of Civil Procedure for an order granting permission to participate in subcase numbers 22-13586 and 22-13854. This Motion should be granted because a) the Movants have an interest relating to the subject matter of these subcases, b) disposition of these subcases may, as a practical matter, impair or impede the Movants' ability to protect that interest, and c) the Movants' interest is not adequately represented by the existing parties to subcase numbers 22-13586 and 22-13854.

LEGAL STANDARD

Pursuant to SRBA AO1 § 10(k),

Any 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...

Rule 24(a) of the Idaho Rules of Civil Procedure entitles a person to intervene in a case as a matter of right when

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

The Idaho Supreme Court has confirmed that parties to the SRBA may intervene in a subcase as a matter of right if they meet the criteria of Rule 24(a). *State v. United States*, 134 Idaho 106, 110 (2000). Further, the Court adheres to the rule that statutes providing for intervention should be given a liberal construction as they were intended to shorten trials, avoid technicalities, and promote the administration of justice. *Herzog v. City of Pocatello*, 82 Idaho 505, 509, 356 P.2d 54 55 (1960).

GROUND FOR PARTICIPATION

SRBA claim numbers 22-13586 and 22-13854 both have Paradise Springs as their source. The Movants irrigate lands near Paradise Springs using ground water rights¹ that divert from an aquifer that is alleged to be hydraulically connected to Paradise Springs. (*See*, Aff. of Thomas J. Budge, Ex. A.) In fact, a neighboring water user, Michael Reid, has utilized a surface water right from Paradise Springs to make a delivery call against the Movants in an effort to have their ground water rights curtailed. (*See*, Aff. of Thomas J. Budge, Ex. B). Consequently, the Movants have an interest in seeing that surface water rights from Paradise Springs, including claim numbers 22-13586 and 22-13854, are properly defined in the SRBA. Otherwise, the Movants' ground water rights may be wrongly subjected to curtailment. Thus, as a practical matter, disposition of these subcases clearly may impair the Movants' ability to protect their interest.

In the process of investigating other Paradise Springs water right claims to which the Movants have filed objections, the Movants discovered an error in the IDWR's recommendation of claim numbers 22-13586 and 22-13854. Rather than file a motion for a late objection, however, the Movants contacted the Claimant directly and are in the process of finalizing a stipulated agreement that will resolve the Movants' concerns.

The only party to these subcases, other than the Claimant, is Michael Reid, who filed an objection to the quantity element of claim numbers 22-13586 and 22-13854. There are currently no ground water users who are parties to these subcases.

¹ Water Right Nos. 22-13135, 22-13167, 22-13169, 22-2280E, 22-2296B, 22-2296D and 22-13681.

Mr. Reid's situation as a surface water user effectively precludes him from adequately representing the Movants' unique interests as ground water users. Further, the Movants' interests go beyond the quantity element, and in particular concern the place of use and priority date of claim numbers 22-13586 and 22-13854. Consequently, the Movants' interests are not adequately represented by other parties to these subcases.

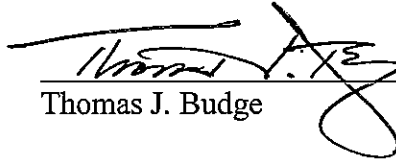
Partial Decrees have not been issued in these subcases, due to Mr. Reid's late objection, nor has a trial schedule yet been set. No party has relied to their detriment upon the Movants' lack of participation to date, and there will be no prejudice to the existing parties by allowing the Movants' participation henceforth.

CONCLUSION

Therefore, having complied with the requirements of AO1 §10(k) and I.R.C.P. 24(a), the Movants respectfully request and order allowing their participation in subcase numbers 22-13586 and 22-13854.

DATED this 2nd day of July, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED



Thomas J. Budge

CERTIFICATE OF MAILING

I certify that on this 1st day of July, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

2. Copy to Claimant:

Andrew J. and Nancy Diane Richardson
P.O. Box 469
Victor, Idaho 83455

Richardson Family Properties, LLC
c/o Andrew J. Richardson
P.O. Box 469
Victor, Idaho 83455

3. Copy to Objector:

Michael L. Reid
550 S 450 W
Victor, ID 83455

4. Copies to:

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

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