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DEPARTMENT OF
WATER RESOURCES

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
208-232-6101 - Telephone
208-232-6109 - Facsimile

*Attorneys for Cedron Irrigation, LLC, Cedron Cemetery District,
Trees, Inc., Teton Rainbow Ranches, Inc., and Wally Rothgeb, Jr.*

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. 22-13509

Case 39576

MOTION TO PARTICIPATE

Cedron Irrigation, LLC, Cedron Cemetery District, Trees, Inc., Teton Rainbow Ranches, Inc. and Wally Rothgeb, Jr. (collectively, "Movants"), 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 number 22-13509. This Motion should be granted because a) the Movants have an interest relating to the subject matter of this subcase, b) disposition of this subcase may, as a practical matter, impair or impede the Movant's ability to protect that interest, and c) the Movant's interest is not adequately represented by the existing parties to subcase 22-13509.

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 number 22-13509 has Paradise Springs as its source. The Movants own ground water rights¹ that divert from an aquifer that is alleged to be hydraulically connected to Paradise Springs. (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 that seeks to have the Movants' ground water rights curtailed. (Aff. of Thomas J. Budge, Ex. B). Thus, the Movants have an interest in seeing that surface water rights from Paradise Springs, including claim number 22-13509, are properly defined in the SRBA. Otherwise, the Movants' water rights may be wrongly subjected to curtailment.

An amended claim was recently filed in this subcase (on September 9, 2009), which changes the claimed priority date from June 1, 1960, to June 1, 1904. The amendment places the Movants at risk of curtailment. Thus, disposition of these subcases clearly may impair the Movants' ability to protect their water rights.

The only party to this subcase other than the Claimant is Michael Reid, who holds a surface water right from Paradise Springs. There are currently no ground water users who are parties to these subcases. Mr. Reid's situation as a surface water user effectively precludes him from adequately representing the Movants' unique interests as ground water users. Therefore, the Movants' interests are not adequately represented by other parties to this subcase.

¹ Water Right Nos. 22-13135, 22-13961, 22-13963, 22-2280E, 22-2296B, 22-2296D and 22-13681.

An Amended Directors Report has not yet been issued in response to the amended claim recently filed in this subcase. A Partial Decree has not been issued in this subcase. Nor has a trial schedule 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.

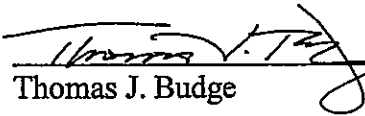
CONCLUSION

Therefore, having complied with the requirements of AO1 §10(k) and I.R.C.P. 24(a), the Movants respectfully request an order allowing their participation in subcase number 22-13509.

RESPECTFULLY SUBMITTED.

DATED this 21st day of October, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED



Thomas J. Budge

CERTIFICATE OF MAILING

I certify that on this 21st day of October, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

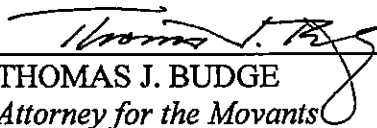
Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Robert L. Harris
Holden Kidwell Hahn & Crapo, PLLC
P.O. Box 50130
Idaho Falls, Idaho 83405-0130

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

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P.O. Box 83720
Boise, Idaho 83720-0098


THOMAS J. BUDGE

Attorney for the Movants