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Movant's Name: A & B Irrigation District

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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. 36-02080
) and 36-15127

Case No. 39576) MEMORANDUM IN OPPOSITION
) TO AMENDED MOTION FOR
) LEAVE TO INTERVENE

DESCRIPTIVE SUMMARY

This pleading is a memorandum in opposition to the Amended Motion for Leave to Intervene of the Conservation Groups filed on behalf of claimant A & B Irrigation District in the Snake River Basin Adjudication.

I. INTRODUCTION

Idaho Conservation League, Inc., Idaho Rivers United, Inc., Idaho Wildlife Federation, Inc., and Northwest Resources Information Center, Inc., self-described as "Conservation Groups" have filed their Amended Motion for Leave to Intervene pursuant to the limited intervention granted by Judge Hurlbutt

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2 in his Order of January 14, 1994, in Case No. 39576 entitled
3 In Re: The General Adjudication of Rights to the Use of Water
4 from the Snake River Basin Water System. This Order makes it
5 clear that intervention may be sought only "where the 'local
6 public interest' standard is determined to apply as a pre-
7 condition to decreeing a water right in the SRBA, . . ." (p.
8 3 of Order). The Court then in its Order made it clear that
9 judicial resolution in the SRBA of the "local public interest"
10 standard for water rights applies only where the notice of
11 claim or recommendation in the Director's Report is based on
12 I.C. §42-1416 or I.C. §42-1416A. (p. 4 of Order). Finally,
13 the Court specifically provided:

14 "The Conservation Groups' *Motion to Recon-*
15 *sider* with respect to water rights claimed
16 or recommended in the Snake River Basin
17 Adjudication based on a permit, license,
18 constitutional appropriation or prior
19 decree is hereby DENIED." (p. 8 of Order).

20 Finally, the narrow scope of the right of the
21 Conservation Groups to intervene is explained in the portion
22 of the Order which states:

23 "This court continues to adhere to its
24 holding in the **Order Denying Intervention**
25 that the 'public trust doctrine' is not an
26 enumerated element of a water right to be
27 decreed in the SRBA, but on reconsidera-
28 tion agrees with the Conservation Groups
that the legislature of the State of Idaho
has given this court jurisdiction and, in
fact, explicitly required judicial resolu-
tion in the SRBA of the 'local public
interest' standard for water rights where
the notice of claim or recommendation in

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2 the Director's Report is based on I.C. §
3 42-1416 or I.C. § 42-1416A."

4 II. BASIS OF CLAIMS NO. 36-02080 AND 36-15127

5 Claim No. 36-02080, the subject matter of the subcase
6 of that same number, is a claim based upon a license issued by
7 the Director of the Department of Water Resources. That
8 license grants the United States the right to divert water from
9 ground water of the State of Idaho. By the previous Order of
10 the Court above referred to, the Conservation Groups are
11 explicitly denied the right to intervene in subcase No. 36-
12 02080, and the Amended Motion for Leave to Intervene in this
13 subcase should be DENIED and any Objection purported to be
14 filed in regard to this subcase must be rejected and refused
15 for filing.

16 Claim No. 36-15127, which is the subject matter of
17 the subcase with this same number, is a claim for the use of
18 ground water for the purposes of irrigation pursuant to I.C.
19 §46-1416(2). Subsequent to the Order of January 14, 1994, In
20 Re: SRBA Case No. 39576, the Court In Re: SRBA Case No. 39576
21 issued its Order dated February 4, 1994, declaring I.C. §42-
22 1416 unconstitutional, as written. On March 16, 1994, the
23 Court entered an Order granting permissive appeal of the
24 Court's Decision of February 4, 1994. If the District Court's
25 declaration that I.C. §46-1416(2) is unconstitutional is
26 affirmed and the legislature of the State of Idaho does not
27 amend or readopt this statute in a form that would be constitu-

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2 tional, this claim will ultimately be denied. For this reason,
3 all further proceedings in regard to the Objections of the
4 Conservation Groups or their Amended Motion to Intervene should
5 be stayed, pending a resolution by the Legislature or the Idaho
6 Supreme Court. For these reasons, it is respectfully requested
7 that further proceedings on this claim be stayed.

8 If the Amended Motion for Leave to Intervene in
9 subcase No. 36-15127 is allowed to proceed to a hearing, and
10 further proceedings, in whole or in part, are held on the
11 Objection sought to be filed, it may result in an exercise in
12 futility. On the other hand, if the Court deems it necessary
13 to proceed on the Amended Motion, it is necessary to consider
14 the interests of the Conservation Groups which they allege to
15 be included in the "local public interest" criteria that may
16 be addressed by the Conservation Groups, and a determination
17 must be made as to whether or not the Conservation Groups have
18 standing to raise those additional issues under the "local
19 public interest" criteria.

20 III. INTERESTS OF THE CONSERVATION GROUPS

21 In support of the Conservation Groups' Amended Motion
22 for Leave to Intervene, they assert several interests which
23 they seek to protect in this proceeding. The Conservation
24 Groups also assert a right to protect their interests in
25 related statutory concerns and the alleged problem of "water
26 spreading" involving Bureau of Reclamation water projects. It
27 is respectfully submitted that the Conservation Groups are

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2 attempting in their Amended Motion to Intervene to expand the
3 interests to which they may be entitled to raise in interven-
4 tion. There is absolutely no basis for the Conservation Groups
5 to raise statutory concerns or water spreading under the very
6 narrow ruling of the District Court. Although an appeal has
7 been taken from the Order of the District Court granting
8 limited intervention by the Conservation Groups, there is no
9 basis in law or fact to expand upon that ruling in this motion.
10 For this reason, the interests of the Conservation Groups in
11 statutory concerns and water spreading must be summarily
12 denied.

13 A. Alleged Interests in the Affected Water Resources

14 (1) The Idaho Conservation League, Idaho Rivers
15 United and Idaho Wildlife Federation allege that they are non-
16 profit Idaho corporations with members residing in Idaho.
17 There is no allegation that the Northwest Resource Information
18 Center has a membership of any kind nor that it represents any
19 person residing in the State of Idaho. It is alleged that the
20 NWRIC has been actively involved in Idaho water policy for many
21 years. There is simply no legal or factual basis upon which
22 NWRIC may claim to represent interests to be protected under
23 the "local public interest" criteria established by the
24 legislature of the State of Idaho.

25 (2) Interests of members of the Conservation
26 Groups are alleged in certain portions of the Amended Motion
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1
2 for Leave to Intervene filed by the Conservation Groups. These
3 alleged interest include the following, to-wit:

4 (a) Protection, preservation and wise
5 management of Idaho's water resources. It is
6 respectfully submitted that these matters are under
7 the exclusive jurisdiction of the legislative branch
8 of the State of Idaho, which has delegated certain
9 matters to the Director of the Idaho Department of
10 Water Resources and are not matters that may be
11 raised under the "local public interest" criteria.

12 (b) Protection of the state's fish, wild-
13 life, and recreational treasures. It is respectfull-
14 ly submitted that there are no fish, wildlife or
15 recreational treasures derived from the ground water
16 to which the claim No. 36-15127 relates and none has
17 been alleged by the Conservation Groups. No changes
18 in points of diversion are included in this claim.

19 (c) Members fish, raft, swim, wade, photo-
20 graph, and otherwise use and enjoy the waters that
21 are the subject of the SRBA. It is respectfully
22 submitted that there is no known fishing, rafting,
23 swimming, wading, photographing, or other use or
24 enjoyment of the ground waters which are the subject
25 matter of this claim by members of the Conservation
26 Groups. The fact that some members of the Conserva-
27 tion Groups may fish, raft, swim, wade, photograph,

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and otherwise use and enjoy some waters that are the subject of the SRBA, does not establish a local public interest in the ground water that is the subject matter of this claim.

(d) Members enjoy the aesthetic benefits of clean, free-flowing, and otherwise aquatic environments in these areas. Unfortunately, the Conservation Groups do not identify the areas they are referring to in their motion. Again, it is clear that they receive no aesthetic benefits from the ground water, and none are alleged.

(e) Some members of the Conservation Groups hold water rights claimed in the SRBA. There is absolutely no allegation however that this claim affects those water rights, and none could be alleged.

(f) Some members of the Conservation Groups own riparian property within the Snake River Basin. No water rights exist as a result of the ownership of riparian property in the State of Idaho, and there are no riparian properties in regard to ground water in the State of Idaho.

(g) Member activities such as fishing, recreation and aesthetic enjoyment of the waters of the Snake River Basin; uses and enjoyment of riparian property and river habitat; and overall enjoyment

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of riverine ecology are directly related to the amount and quality of water in the streams and rivers of the basin, and will be affected by the SRBA. There is absolutely no allegation that any of these interests relate to the ground water from which water is diverted under this claim or that they are part of any local public interest to be protected in a diversion of ground water under this claim.

(h) Rights of the public to recreational use of navigable waterways are protected. The Conservation Groups fail to allege or even infer that the ground waters from which water is diverted under this claim are available for any recreational use or constitute a navigable waterway. The Conservation Groups also conveniently ignore the fact that the rights of the public to recreational use of navigable waterways does not grant to the public a right to the water in the navigable waterways.

(3) The Conservation Groups seek to intervene in these subcases to address issues far beyond the limited scope of the "local public interest." These allegations are clearly beyond the scope of issues that can be addressed as set forth in the Order of Judge Hurlbutt dated January 14, 1994, in Case No. 39576. The Conservation Groups are clearly bound by that Order and an attempt to expand upon the right, if any,

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2 to intervene in these subcases should be summarily stricken
3 from the Amended Motion. The Conservation Groups' efforts to
4 expand the scope of any intervention are as follows:

5 (a) The Conservation Groups seek to address
6 the contractual rights between the A & B Irriga-
7 tion District and the Bureau of Reclamation.
8 These are not issues of "local public interest"
9 and the Conservation Groups have no standing to
10 raise such issues. The United States is a party
11 to the SRBA and there is no showing that the
12 United States is not competent to fully protect
13 its contractual rights and obligations or that
14 such contractual rights and obligations are a
15 subject matter of the SRBA. Conclusions by the
16 Conservation Groups that "water spreading" is a
17 significant problem in Idaho is neither support-
18 ed by competent allegations nor do such
19 frivolous statements create issues for resolu-
20 tion under the SRBA. Particular objection is
21 made to the spurious statement that water use
22 under federal projects is financed by taxpayers
23 and citizens of the states, including Idaho.
24 There is simply no factual basis to support such
25 allegations.

26 (b) The Conservation Groups, in their Amend-
27 ed Objection, seek to raise the issue as to

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whether or not the uses under these claims are "contrary to the conservation of water resources within the State of Idaho." This issue is separate and distinct from the "local public interest" and is not within the scope under which the Conservation Groups have the right to intervene in the SRBA.

(c) The Conservation Groups assert in their Amended Objection that any expansions in the use of water rights are contrary to the statutory procedures in Title 42 of the Idaho Code, which is a direct attack upon § 42-1416(2), which has been found to be unconstitutional. However, such a claim is not within the limited scope by which the Conservation Groups may be entitled to intervene in these subcases.

(d) The Conservation Groups seek to have the entire Director's Report remanded to the Director to insure that the recommended rights do not impair public values in Idaho's waters contrary to the public interest and the public trust. This issue has been fully addressed by Judge Hurlbutt and is beyond the scope of any intervention to which the Conservation Groups may be entitled.

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IV. LOCAL PUBLIC INTEREST IN IDAHO

On March 29, 1978, the legislature of the State of Idaho amended §42-203, Idaho Code, which is now known as §42-203A, Idaho Code, by which it added an additional provision by which the Director may reject such application and refuse issuance of a permit. This added provision was:

"(5) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use." 1978 Idaho Sess. Laws, ch. 306 §1, pp. 768-69.

The Idaho Supreme Court in Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (Idaho 1985), attempted to define "the local public interest." In this endeavor, the Court first looked at the definition of "public interest", as provided in §42-1501, Idaho Code. This section of the Idaho Code was adopted to provide a means by which the State of Idaho could preserve minimum stream flows required for the protection of fish and wildlife, habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality. The legislature in I.C. §42-1501, further provided:

"The preservation of the water of the streams of this state for such purposes when made pursuant to this Act is necessary and desirable for all the inhabitants of this state, is in the public interest and is hereby declared to be a beneficial use of such water."

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Chapter 15 of Title 42 then provides a specific and exclusive statutory procedure for the establishment of a right to a minimum stream flow. Minimum stream flows in the State of Idaho cannot be established by individuals or groups of individuals, including the Conservation Groups seeking to intervene to file Objections in these subcases.

The Court in Shokal v. Dunn, supra, also stated that common sense argues that other elements ought to be considered part of the local public interest. These include:

- (a) the proposed appropriations benefit to the applicant,
- (b) its economic effect,
- (c) its effect of loss of alternative uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation,
- (d) its harm to others,
- (e) its effect upon access to navigable or public waters,
- (f) the intent and ability of the applicant to complete the appropriation,
- (g) assuring minimum stream flows, as specifically provided in I.C. §42-1501,
- (h) discouraging waste,
- (i) encouraging conservation, and
- (j) water salvage.

In defining these elements, the Court stated:

"By using the general term 'the local public interest,' the legislature intended to include any locally important factor

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impacted by proposed appropriations."
(Emphasis added) 707 P.2d at pp. 449-456.

The Court further stated:

"The relevant elements and the relative weights will vary with local needs, circumstances, and interests." (Emphasis added) 707 P.2d at p. 450.

The Court then noted that:

"Water Resources may give great consideration to the aesthetic and environmental ramifications of granting a permit which calls for substantial modification of the landscape or the stream." (Emphasis added) 707 P.2d at p. 450.

Finally, the Court stated:

"The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to Water Resources' sound discretion." See 1 R. Clark ed., *Waters and Water Rights* §29.3, 170 (1967); 707 P.2d at p. 450.

Each of these elements of the local public interest must be reviewed to determine whether or not the Conservation Groups have raised an issue. It is also necessary to point out that the legislature has obviously considered many of these local public interest elements in passing legislation authorizing the Department to recognize a constitutional appropriation of water for expanded acres prior to November 17, 1987, without following the application process required by §42-203A.

The Idaho Supreme Court next addressed the "local public interest" criteria in Hardy v. Higginson, 123 Idaho 485, 849 P.2d 946 (Idaho 1993). In this case, the Court approved

1 the consideration by the Director of the "local public
2 interest" involving the amendment of a water right. The Court
3 found that consideration of the "local public interest"
4 criteria was justified in view of the fact that the area where
5 the amendment of the permit was to take place was an "Area of
6 Critical Environmental Concern", as designated by the Bureau
7 of Land Management, and therefore was specifically devoted to
8 preservation in its natural state. The Court then stated:
9

10 "Clearly, the protection of this habitat
11 falls within the local public interest as
12 defined in *Shokal*."

13 A great deal of emphasis was placed on the fact that
14 the Director was considering the amendment of a permit, and not
15 a license, and therefore constituted only an inchoate or
16 contingent right. On the other hand, in reviewing the
17 presumption statutes, it is clear that the Legislature was
18 recognizing an accomplished and complete appropriation, waiving
19 the administrative process required to obtain a permit through
20 notice and if necessary, hearing by the Director.

21 In Hardy v. Higginson, supra, the Court noted that
22 the protestants, although having no water rights within Box
23 Canyon, sought to protect these locally important factors and
24 thus their interests were properly considered by the Director,
25 where the amendments to the permits call for substantial
26 modification of the landscape or stream.
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It is therefore necessary for the Court in considering the intervention by the Conservation Groups as to whether or not the interests of the Conservation Groups are in fact "locally important factors" in the area where the water rights are claimed by the United States and A & B Irrigation District under subcase No. 36-15127. The Conservation Groups have not identified a "local public interest" which they are entitled to have protected by the filing of Objections.

Claim No. 36-15127 before the Court to which the Conservation Groups seek to file an Objection was allowed by the Director pursuant to §42-1416(2), Idaho Code. Under this section, expansion of the use after acquisition of a valid unadjudicated water right in violation of the mandatory permit requirements shall be presumed to be valid and to have created a water right with a priority date as of the completion of the expansion, in the absence of injury to other appropriators. The Conservation Groups are not appropriators of water to which they claim injury. There is no requirement that such expansion of use must meet the substantive criteria of §42-222, Idaho Code, as provided under §42-1416A, Idaho Code. In fact, §42-1416A specifically provides that "this section shall not be construed to limit the provisions of §42-1416, Idaho Code."

Section 42-1406A, Idaho Code, requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water of the Snake River Basin be determined. To that extent, this section

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further, under §42-1406A(2)(a) authorizes the Director to commence an investigation and determination of the various water rights to be adjudicated within the system. In the pursuit of these duties, the Director is authorized under §42-1410, Idaho Code, to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant's water use.

Under §42-1805, Idaho Code, the Director of the Department of Water Resources is granted additional powers and duties, including:

"(3) to conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

. . .

(5) to cooperate with and coordinate activities with the Administrator of the Division of Environmental Protection of the Department of Health and Welfare as such activities relate to the functions of either or both departments concerning water quality."

It therefore must be assumed that the Director has performed his duties in recommending this claim. In review of the elements to be considered in considering the local public interest, it is clear that the Director did consider these elements.

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2 V. ALLOWANCE OF CLAIM NO. 36-15127 WAS IN THE
3 LOCAL PUBLIC INTEREST

4 This claim is for the expansion in the place of use,
5 without an increase in the rate of diversion under the original
6 licensed right.

7 (a) As the water had been used on these lands since
8 1984, for the purpose of irrigating crops, it was obviously a
9 benefit to the landowner of the project constructed by the
10 United States and operated by A & B Irrigation District for the
11 benefit of the landowners in the District.

12 (b) It is clear that a substantial economic effect
13 would occur should this claim not be allowed, the second
14 element to be considered under the local public interest.

15 (c) In view of the fact that the expansion in a
16 place of use occurred prior to substantial appropriations from
17 the same aquifer, there can be no loss from the aquifer for
18 alternative uses, the third element of the local public
19 interest hereinabove described.

20 (d) There can be no showing that the expanded place
21 of use has caused substantial harm to others in view of the
22 fact that subsequent appropriations have been granted from the
23 same source.

24 (e) It is clear that the allowance of this claim
25 does not affect in any manner access to navigable or public
26 waters.

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2 (f) The intent and ability of the applicant to
3 complete the appropriation has been established, as the
4 appropriation was completed in 1984.

5 (g) It is clear that the expansion in the place of
6 use has not interfered with minimum stream flows that have been
7 provided under I.C. §42-1501, et seq., and there are no
8 allegations that minimum stream flows have been affected. If
9 such flows had been affected, the resource would be managed
10 according to the priority granted to the minimum stream flows.
11 Under Chapter 15 of Title 42, the appropriation of a minimum
12 stream flow must be from the unappropriated waters of the
13 state. "Unappropriated water" means water which is not subject
14 to diversion and use under any prior existing water right
15 established by diversion and application to the beneficial use
16 or by application, permit or license on file or issued by the
17 Director, with a priority of water right date earlier than an
18 application for appropriation of minimum stream flow filed
19 under the provisions of the Act.

20 (h) The allowance of the claim discourages waste.
21 To disallow the claim would encourage waste, as the lands are
22 being irrigated without an increase in the diversion rate.

23 (i) The allowance of the claim encourages conserva-
24 tion, as conservation is required to insure that additional
25 lands can be irrigated without an increase in the diversion
26 rate.

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2 (j) Finally, water salvage is accomplished, as the
3 lands are being irrigated with water salvage from the irriga-
4 tion of the original lands on which a license was issued,
5 thereby showing that the water for the irrigation of the
6 original lands is not wasted.

7 VI. RIGHT OF CONSERVATION GROUPS TO INTERVENE

8 The Conservation Groups assert a right to intervene
9 pursuant to Rule 24(a) of the Idaho Rules of Civil Procedure.
10 This rule allows intervention when a statute of the State of
11 Idaho confers an unconditional right to intervene. No such
12 statute exists, as the Conservation Groups are not claimants
13 in the SRBA. Alternatively, Rule 24(a) allows intervention
14 when the applicant claims an interest relating to the property
15 or transaction which is the subject of the action and he is so
16 situated that the disposition of the action may as a practical
17 matter impair or impede his ability to protect that interest,
18 unless the applicant's interest is adequately represented by
19 existing parties. Under this section of the rule, the
20 Conservation Groups assert protectable interests in the issues
21 raised in this proceeding, including their interest in water
22 resources that will be directly affected by their right
23 claimed. The Conservation Groups have set forth no interest
24 in the aquifer from which ground water is diverted under this
25 claim. The Conservation Groups fail to recognize that this
26 claim relates to an accomplished appropriation. The Conserva-
27 tion Groups have neither alleged, nor can they, that this

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2 appropriation in 1984 has substantially affected any local
3 public interest they may have had in 1984 that was substantial-
4 ly impacted by the diversion of ground water in 1984. An
5 allowance of this claim will not create any potential changes
6 to any of the claimed interests of the Conservation Groups
7 subsequent to 1984. To raise an issue through intervention
8 that the allowance of this claim would be contrary to the
9 "local public interest", it is absolutely necessary for the
10 Conservation Groups to have alleged some public interest that
11 existed in 1984 that has since that date been substantially
12 impaired as a result of the appropriations that had occurred
13 by 1984. As noted by the United States Supreme Court:

14 "A justiciable controversy is thus distin-
15 guished from a difference or dispute of a
16 hypothetical or abstract character; from
17 one that is academic or moot. * * * The
18 controversy must be definite and concrete,
19 touching the legal relations of parties
20 having adverse legal interests. * * * It
21 must be real and substantial controversy
22 admitting a specific relief through a
23 decree of conclusive character, as distin-
24 guished from an opinion advising what the
25 law would be upon a hypothetical state of
26 facts." Aetna Life Insurance Co. v.
27 Haworth, 300 U.S. 227, 240-241 (1937).

28 The Legislature of the State of Idaho, in adopting
I.C. §42-1416(2), recognized, as it had the authority to do,
a constitutional appropriation of water by diversion and
application to a beneficial use. Although the Conservation
Groups may believe that it was not in the "local public
interest" for such legislation to have been adopted, interven-

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2 tion in these subcases is not their proper remedy. As the
3 Conservation Groups recognized on page 12 of their Amended
4 Motion for Leave to Intervene, their interests "must be in the
5 matter in litigation, and of such a direct and immediate
6 character that the intervenor will either gain or lose by the
7 direct legal operation and affect of the judgment." Again, the
8 Conservation Groups' interest appears to be directed to the
9 wisdom of the Legislature in recognizing constitutional
10 appropriations of water, rather than any interests they may
11 have that have been substantially impaired as a result of the
12 diversion and application to a beneficial use of that water for
13 ten years. If there is a local public interest that can be
14 identified by the Conservation Groups, then it is incumbent
15 upon them to establish how that local public interest has in
16 fact been substantially impaired. It is not sufficient to
17 identify a hypothetical interest that might, hypothetically,
18 be impaired. In fact, the Conservation Groups have failed to
19 identify any interest that is legally protectable in the SRBA
20 proceedings. The protection of the state's fish, wildlife and
21 recreational treasures is accomplished by the adoption of
22 minimum stream flows. To the extent minimum stream flows have
23 been established, it was from unappropriated waters. These
24 stream flows can be protected once they have been established,
25 as against junior appropriators. The Court in the SRBA has no
26 legal authority to establish additional flows that have not
27 been appropriated as required by statute. Intervention is not

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2 allowed to establish a public forum by which one may assert
3 that the proper legal authorities of this State have not acted
4 properly in establishing what the intervenor may deem appropri-
5 ate for his interests.

6 Without identifying a protectable interest that may
7 be impaired, the Conservation Groups have no standing to
8 intervene in these subcases.

9 Finally, the Conservation Groups have failed to
10 address how their interests are not adequately represented by
11 existing parties. The Conservation Groups have neither
12 indicated nor suggested that the Idaho Department of Water
13 Resources, the Idaho Department of Fish and Game, the Idaho
14 Department of Parks and Recreation, the United States Forest
15 Service, the United States Bureau of Land Management, United
16 States Bureau of Reclamation, or the United States Fish and
17 Wildlife Service have not or will not represent the local
18 public interest sought to be protected by the Conservation
19 Groups. The lack of a protectable interest or standing by the
20 Conservation Groups is supported by the Affidavit of Marti
21 Bridges dated February 25, 1994, and submitted in support of
22 the Amended Motion for Intervention. Marti Bridges raises the
23 concern of the Bureau of Reclamation in determining its policy.
24 This clearly is not an interest that may be impaired under the
25 SRBA. She also expresses concern over the middle reach of the
26 Snake River, but by omission recognizes that ground water
27 pumping in the Snake Plain Aquifer does not substantially

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affect water quantity, water flows or water quality in the middle Snake River. Marti Bridges then asserts in her Affidavit, under oath, that she has reviewed the water recommendations made in regard to Water Rights 36-02080 and 36-15127. It is true that the recommended water rights have a total diversion rate of 1,100 cfs, but she fails to recognize that this is the diversion allowed by the license issued in 1948. The fact that the diversion of 1,100 cfs may have some impact on aquifer levels and discharges, and will provide some aquifer recharge, these matters are not issues that may be raised by the Conservation Groups by intervention. On the other hand, it is absolutely untrue that Water Right No. 36-02080 was recommended under I.C. §42-1416(2). It is also absolutely untrue that any portion of the lands described in Water Right No. 36-15127 lie outside the boundaries of A & B Irrigation District. With the extensive education and experience in water policy of this affiant, she should know that there is no such thing as a bureau district boundary.

CONCLUSION

It is respectfully submitted that the Amended Motion to Intervene filed by the Conservation Groups be denied and overruled in all respects. By Order of the District Court in the SRBA, the Conservation Groups may intervene only in those subcases dealing with a water right based upon §42-1416 and §42-1416A, Idaho Code. On those claims, the Conservation Groups may intervene only to the extent that they have

1 established an interest that would be substantially impaired
2 by the approval of that water right. Those interests may not
3 include interests that are not included in the term "local
4 public interest." The concerns of the Conservation Groups,
5 regardless of their sincerity, cannot be addressed unless they
6 relate to an interest defined as a part of the local public
7 interest. Statewide and national issues are not included
8 within the local public interest criteria. The Conservation
9 Groups have established no local public interest that was
10 impaired in 1984, and therefore would be impaired by the
11 confirmation of a water right established at that time. Having
12 failed to establish a protectable interest under the local
13 public interest criteria, their Amended Motion to Intervene in
14 subcase No. 36-15127 must also be denied in all respects.
15

16 RESPECTFULLY SUBMITTED this 29th day of March, 1994.

17 LING, NIELSEN AND ROBINSON

18
19 By: 

20 Roger D. Ling
21 Attorney for A & B Irriga-
22 tion District
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CERTIFICATE OF MAILING

I hereby certify that on the 29th day of March, 1994,
I served a copy of the foregoing MEMORANDUM IN OPPOSITION TO
AMENDED MOTION FOR LEAVE TO INTERVENE upon:

Original to:

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

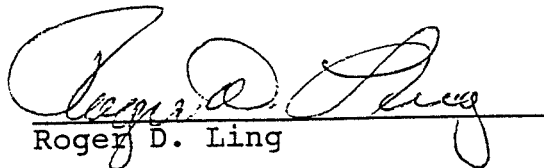
Copies to:

Laird J. Lucas
Land and Water Fund of the Rockies
Idaho Office
P.O. Box 1612
Boise, Idaho 83701

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

by depositing a copy thereof in the United States mail, postage
prepaid, in an envelope addressed to said persons at the
foregoing addresses.


Roger D. Ling