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Adjudication Bureau

UNITED STATES OF AMERICA

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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 No. 36-00134A |
|                | ) |                       |
|                | ) | MOTION TO PARTICIPATE |
| Case No. 39576 | ) | AS AMICUS CURIE       |
|                | ) |                       |
| -----          |   |                       |

Descriptive Summary

This is the United States motion to participate in the above referenced consolidated subcase as an amicus curie.

I. Introduction and Background

The United States hereby requests that it be allowed to participate in the above-referenced consolidated subcase as an amicus curie. The United States makes this request because the

subcase involves common questions of law affecting the United States' claims to water rights in Basin 36.

The United States was a party to subcase 36-00134A by filing a timely objection to the priority date recommended in the Director's Report. As a party, the United States participated in telephonic status and scheduling conferences and attended depositions of party representatives. As a result of the conferencing and establishment of preliminary issues, it became apparent that issues beyond the United States' factual objection may be litigated in the context of this subcase. Specifically, issues regarding IDWR's methodology for determining quantity of water used and the effect of the Director's recommendations on previously decreed water rights have arisen. Because these issues may affect United States' claims throughout basin 36, the United States expressed a desire to participate and brief the court, if necessary, on these and other legal issues arising in this subcase.

Throughout the period of conferences and discovery, the United States maintained and reiterated to the Court and the parties that it may not pursue its factual objection to the priority date recommendation. On August 4, 1995, the United States signed and forwarded to counsel for the claimant a stipulation to withdraw its objection to the priority date in subcase 36-00134A. This stipulation is expected to be filed with the Court in the immediate future. Because the United States no longer has an objection to the specific facts as recommended in

the Director's Report, the United States now moves this Court to permit it to participate as an amicus curie.

## **II. Discussion**

The United States is a claimant to water rights in the Snake River Basin Adjudication in Basin 36 and a licensed holder of water rights in this subbasin on behalf of the Bureau of Reclamation, the Bureau of Land Management and the Fish and Wildlife Service. Adjudication of these water rights may include determinations of law and fact in common with significant issues that may be decided in the litigation of consolidated subcase 36-00134A.

### **1. The United States has met the criteria for participation in the subcase.**

SRBA Administrative Order No. 1, Rules of Procedure, permits a party to the SRBA to seek leave to participate in a subcase by timely filing a motion. The United States has met the criteria necessary to participate in this subcase. The United States is a party to the adjudication and meets the first requirement for participation under A.O. 1 § 6g. Furthermore, the United States participated as a party in this subcase to date.

The United States has recently resolved its objection to the priority date with the parties to this subcase. The requested change in status to allow the United States to continue to participate in this subcase as an amicus curie comes immediately upon filing of the stipulation to resolve its objection. Thus, this request is timely.

**2. Participation as an Amicus Curie should be granted.**

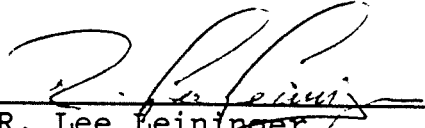
The United States should be permitted to continue to participate in this case as an amicus curie. No other party or the Idaho Department of Water Resources represents the interests of the United States and its agencies. The United States participation in the legal issues that have arisen in this subcase may greatly assist the parties and the court in its consideration of the case.

The parties will not be prejudiced by the United States participation in the proceeding as an amicus curie. Counsel for the claimant, Mr. Patrick Brown, has been contacted and does not object to the change in the United States' status to that of an amicus curie. Furthermore, because the United States had been a party to the matter and has only recently resolved its objection, the United States continued participation will not cause undue delay.

**III. Conclusion**

The United States respectfully asks that it be permitted to participate as an amicus curie in consolidated subcase 34-00134A and be permitted to receive all pleadings and filings, participate at oral argument, submit briefs in support of or in opposition to motions, and submit pre- and post-trial memoranda.

Respectfully submitted this 4<sup>th</sup> day of August, 1995.

  
\_\_\_\_\_  
R. Lee Leininger  
Attorney, ENRD

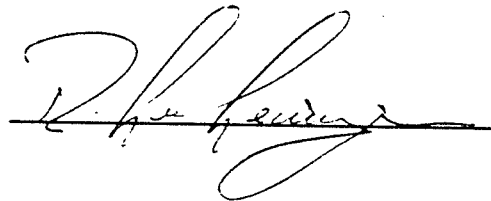
CERTIFICATE OF SERVICE

I certify that on the 4th day of August, 1995, I served a true and correct copy of the United States' Motion to Participate as Amicus Curie in consolidated Subcase No. 36-00134A upon the following individuals:

Nicholas Spencer  
Brent King  
Deputy Attorneys General  
Idaho Department of Water Resources  
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Mr. Patrick Brown  
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Mr. Jeffery C. Fereday  
Givens, Pursley & Huntley  
277 North 6th St., Suite 200  
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A handwritten signature in black ink, appearing to read "R. H. Fereday", written over a horizontal line.