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Adjudication Bureau

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OFFICE OF THE
ATTORNEY GENERAL

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 No. 34-10030

**BRIEF IN SUPPORT OF
MOTION TO INTERVENE**

DESCRIPTIVE SUMMARY

This is the brief in support of the motion to intervene filed by United Water Idaho ("United Water") (formerly Boise Water Corporation) and the City of Rexburg ("Rexburg"), collectively "Municipal Claimants."

BRIEF

United Water and Rexburg each hold numerous municipal water rights which will be subject to adjudication in the Snake River Basin Adjudication. A statement of interests of both entities is set out in Appendix A.

On April 11, 1995, Special Master Brigitte Bilyeu ordered briefing on issues relating to the nature of municipal water rights in this subcase. Although the Municipal Claimants have filed no objections—and have no objections—to the water rights claimed by the City of Arco ("Arco") in this subcase, it now appears that broad issues of law have been raised in the subcase which may have a substantial bearing on the adjudication of water rights claimed by the Municipal Claimants.

The April 11, 1995 briefing order grew out of a Standard Form 5 hearing held on April 5, 1995 by the Special Master in which the Special Master and the parties discussed the following issues:

1. What is the appropriate definition of a municipal right?
2. May the place of use be specified by reference to "city limits," as opposed to a description by legal subdivision?
3. May the place of use for a municipal water right be stated so as to include city limits (or service area) as they change over time?
4. May the place of use for a municipal water right extend beyond the city limits (or service area)?
5. May a municipal water right be sized in such a way as to allow a city to grow into its full use over time?

The Special Master invited briefing with respect to each of these (with emphasis on the first two).

The answers to each of these questions are of great consequence to United Water and Rexburg, because the legal issues are equally applicable to other

municipal water rights. For this reason, the Municipal Claimants satisfy the requirement under I.R.C.P. 24(b)(2) that "the applicant's claim or defense and the main action have a question of law or fact in common."

While the current parties to the case may have some common interests with the Municipal Claimants, none of the current parties have fully articulated the concerns and legal arguments which the Municipal Claimants wish to bring to the attention of the Court. *See*, Transcript of Special Master's Hearing (April 11, 1995). By way of a single example, counsel for the City of Pocatello correctly observed that "folks like Boise Water [now United Water] are real sensitive to these issues, because they are a utility and they have a service area for their utility and often it is greater than in municipal boundaries." *Id.* at unnumbered page 8. No other party to the subcase has a service area outside of a city's municipal limits. Other issues unique to the Municipal Claimants (or at least uniquely presented) are set out in the accompanying *Motion on Municipal Water Rights* and its Appendix A. In short, the existing parties may not adequately represent the applicants' interest.

Idaho Rule 24(b) also requires the court to "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Given that the Municipal Claimants do not oppose the water rights claimed by Arco, there is no likelihood that their intervention will cause delay or prejudice.

In any event, under Administrative Order No. 1, the Municipal Claimants would have a right to file a Notice of Challenge to any Special Master's Report.

Rather than waiting until after an initial decision is rendered, however, the Municipal Claimants seek to assist the Court and the Special Master by providing legal argument as these issues first are being considered.

This motion to intervene is timely. The Municipal Claimants and their counsel were first made aware of the issues raised in this subcase (and the existence of a briefing schedule) on April 18, 1995. This motion to intervene is filed within the deadline for substantive briefs on the issues.

Respectfully submitted this 21st day of April, 1995.

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APPENDIX A: *Statement of Interests*

1. United Water Idaho ("United Water")

United Water (formerly Boise Water Corporation), provides municipal water to much of the Boise Valley under a franchise from the City of Boise, and a certificate of convenience and necessity issued by the Idaho Public Utilities Commission. United Water is Idaho's largest single provider of water to domestic, commercial, municipal and industrial water users. United Water relies heavily on ground water rights it owns with priorities ranging from the 1930s to the 1990s to serve a population of 140,000 in the Boise Valley. This requires diversion of over 11 billion gallons of water annually from 58 wells.

2. The City of Rexburg ("Rexburg")

Rexburg obtains its entire municipal water supply from ground water to serve over 15,000 persons within the city and on the Ricks College campus. The city's most recent well was licensed in 1993.

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 1995 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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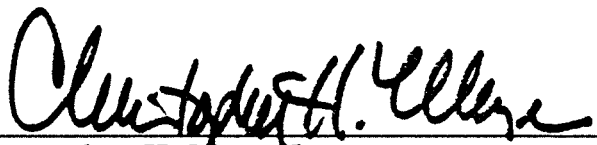
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