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DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

FILED \_\_\_\_\_

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

)  
) ORDER GRANTING MOTION TO  
) PARTICIPATE

United Water Idaho (United Water) and the City of Rexburg (Rexburg) filed a *Motion to Intervene (Motion)* in subcase No. 34-10030 based on I.R.C.P. 24(b). Under the Rules of Procedure established by *SRBA Administrative Order 1* (A.O.1), motions to participate in a subcase shall be entitled "Motion to Participate" and are to be treated like motions to intervene under I.R.C.P. 24. A.O.1, Section 6g. The court will treat this *Motion* as a *Motion to Participate*. United Water and Rexburg seek to participate or intervene, asserting that some of the issues raised in this subcase may be applicable to water rights of United Water and Rexburg. Specifically, questions of how to decree municipal water rights may affect the water rights of United Water and Rexburg.

A *Standard Form 5* was filed for this subcase on March 16, 1995. At the hearing on the *Standard Form 5*, the court inquired about the meaning of "municipal" as a purpose of use and inquired about how the place of use should be described for "municipal" water rights. Rexburg and United Water assert that existing parties may not adequately represent their interests because no current party to the subcase has a service area outside a municipality.

I. STANDARD OF REVIEW UNDER I.R.C.P. 24(b)

The Idaho Rules of Civil Procedure set forth the criteria for allowing intervention. Rule 24(b) establishes the requirements for permissive intervention.

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

I.R.C.P. Rule 24(b) (1994).

The Idaho Supreme Court has established the test for permissive intervention under Rule 24(b). In order to prevail on a motion for permissive intervention:

1. The application must be timely, and the court must consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
2. The applicant must show that its claim or defense and the main action have a question of law or fact in common.

*Rodriguez v. Oakley Valley Stone, Inc.* 120 Idaho 370, 376, 816 P.2d 326, 332 (1991); *Idaho Conservation League, Inc., v. State of Idaho*, 1994 WL 330626 (*decision on rehearing pending*). In addition, the determination to allow permissive intervention is discretionary with the court. 120 Idaho at 377; 1994 WL 330626.

Under the criteria established by the Idaho Supreme Court, United Water and Rexburg should be allowed to intervene.

**A. The Motion to Participate was Timely**

Rule 24(b) requires that an application for intervention be timely, and directs the court to consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The Idaho cases which have analyzed timeliness of motions to intervene have given great latitude to applicants. *Duff v. Draper*, 96 Idaho 299, 527 P.2d 1257 (1974), *aff'd*, 98 Idaho 379, 565 P.2d 527 (1978). In this case, United Water and Rexburg filed its *Motion to Intervene* after the time period had run to

file objections and responses and after the *Standard Form 5* was submitted. The *Motion* was filed, however, very soon after the issues about municipalities arose during a hearing. In addition, the *Motion* was filed prior to completion of the *Masters Report and Recommendation*. United Water and Rexburg do not oppose the City of Arco's claim in this subcase, but intend only to participate in briefing which relates to how municipal water rights should be decreed. In addition, none of the parties to the subcase has objected to the timeliness of the *Motion*. There has been no showing that the *Motion* would unduly delay or prejudice the adjudication of the rights of the original parties. The *Motion* is timely.

**B. United Water and Rexburg's Claims Assert a Common Question of Law or Fact**

United Water and Rexburg did not seek intervention under I.R.C.P. 24(a) which would require a showing that a state statute provides a basis for the *Motion* or that Movants have an interest in the property or transaction. Rather, United Water and Rexburg seek to intervene under I.R.C.P. 24(b). Under this rule, it is sufficient to show that the applicant has a claim or defense which has a question of law or fact in common with the main case. United Water and Rexburg claim that issues which have been raised in this subcase, including questions regarding the definition of "municipal," are similar to claims and defenses they may raise in subcases in which they are claimants. Additionally, United Water and Rexburg claim an interest in how the legal description for the place of use of a municipal water right is recommended. Although United Water and Rexburg do not raise objections to this water right, they claim an interest in how this subcase is recommended because the legal decisions in this subcase may be applicable to other municipal rights.

*Brief in Support of Motion to Intervene at 2-3.*

None of the current parties to this water right has challenged the claimed interests of United Water and Rexburg. United Water and Rexburg have alleged common issues of law or fact sufficient to comply with the requirements of Rule 24(b).

**C. Discretion of the Court**

This subcase will presumably result in a *Master's Report and Recommendation* recommending how this water right should be decreed.

This subcase is one of the first the court has considered in Basin 34, in which the question of how to decree municipal rights has arisen. Thus, the intervention of Rexburg and United Water for the purpose of briefing these issues may assist the court in making its decision. The court will exercise its discretion by allowing Rexburg and United Water to intervene.

**II. CONCLUSION**

*The Motion to Intervene (Participate)* by United Water and Rexburg is timely. United Water and Rexburg have made the proper showings of common issues of law or fact. Therefore, the *Motion to Intervene (Participate)* is GRANTED and the *Brief on Municipal Water Right Issues* lodged April 24, 1995 shall be included in the record for this subcase.

IT IS SO ORDERED.

DATED June 8, 1995.

  
BRIGETTE BILYEU  
Special Master, Reporting Area 1  
Snake River Basin Adjudication

## **CERTIFICATE OF MAILING**

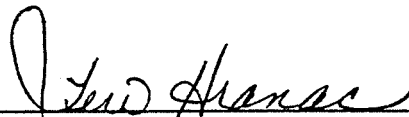
I certify that a true and correct copy of the **ORDER GRANTING MOTION TO PARTICIPATE** was mailed on June 8, 1995, with sufficient first-class postage to the following:

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