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Movant's Name: Department of Water Resources
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	)	Subcase Nos. 01-10223; 01-10248;
	)	25-02160; 25-13615; 27-02007;
Case No. 39576	)	27-11560; 27-11561
	)	
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO PARTICIPATE

DESCRIPTIVE SUMMARY

Memorandum supporting the motion of the Twin Falls Canal Company and the North Side Canal Company (the Companies) to participate in the above-captioned subcases for the limited purpose of filing a memorandum in support of the joint motions filed by the United States, the Shoshone-Bannock Tribes and the State of Idaho on February 27, 1995, seeking to dismiss objections to the 1990 Fort Hall Indian Water Rights Agreement, and otherwise participating in the disposition of the joint motions and the objections.

STATEMENT OF FACTS

In an attempt to resolve claims in the Snake River Basin upstream from Hells Canyon, made by the Shoshone-Bannock Tribes, the U.S., the Tribes, and the State

1 of Idaho entered into negotiations during 1985. Various water users, including the
2 Companies, represented by the Committee of Nine (the advisory committee for Water
3 District 01), participated in these negotiations in order to minimize the impact of the
4 tribal claims on their rights. These efforts ultimately resulted in the 1990 Fort Hall
5 Indian Water Rights Agreement, which, the Committee of Nine, among others, signed.
6

7 The Agreement was executed on July 5, 1990 and approved by Congress
8 in November, 1990. Again, water users, including the Companies, were actively involved
9 in securing Congressional approval.

10 The Director's Report for the Agreement was submitted on March 31, 1994.
11 More than 210 objections were filed to the report, of which all but 9 have been
12 withdrawn or otherwise resolved.
13

14 This memorandum supports the Companies' motion to participate in the
15 above-captioned subcases for the limited purpose of filing a memorandum in support of
16 the joint motions to dismiss the remaining objections to the 1990 Fort Hall Indian Water
17 Rights Agreement, and otherwise participate in the disposition of the joint motions and
18 the objections.
19

20 ARGUMENT

21 The Companies are parties to the SRBA. However, they are not parties
22 to the above-captioned subcases. Therefore, in order to participate in the subcases, the
23 Companies must "by timely motion, seek leave to participate" in the subcases. SRBA
24 Administrative Order 1, Rules of Procedure, Rule 6.g. Such a motion is to be treated
25 like a Motion to Intervene, as governed by I.R.C.P. 24. Id.
26
27
28

1 I.R.C.P. 24 provides two means to intervene: (1) intervention of right
2 under Rule 24(a); and (2) permissive intervention under Rule 24(b). The Companies'
3 qualify for intervention under both.
4

5 Upon timely application, intervention of right exists:

6 . . .when the applicant claims an interest relating to the
7 property or transaction which is the subject of the action and
8 the applicant is so situated that the disposition of the action
9 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.

10 I.R.C.P. 24(a)

11 On the issue of interest in the matter, the test is whether the interest of the
12 applicant is "of such a direct and immediate character that [the applicant] will either gain
13 or lose by the direct legal operation and effect of the judgment." People ex rel.
14 Glidden v. Green, 1 Idaho 235, 240 (1869); Pittock v. Buck, 15 Idaho 47, 54, 96 P. 212,
15 214 (1908).
16

17 In the instant action, the Companies have an interest in the claims made
18 in each of the subcases. The claims to the use of water in the Snake River Basin
19 upstream from Hells Canyon, made by the Shoshone-Bannock Tribes, because of their
20 locations, quantities, and priority dates, have the potential to adversely impact water and
21 other property rights held by the Companies. The rights of the Companies include, but
22 are not limited to, those set forth in Exhibit "A", attached hereto.
23

24 In an attempt to limit the exposure that the tribal claims might have on the
25 Companies, the Companies have been actively involved in the negotiation and settlement
26 of those claims over the past several years and have expended considerable time and
27 expense during the process. The resolution of the tribal claims is set forth in the 1990
28

1 Fort Hall Indian Water Rights Agreement. The Companies and other water users were
2 officially represented by the Committee of Nine (the advisory committee for Water
3 District 01) during the negotiations and in the signing of the Agreement. Agreement,
4 Arts. 3.8, 4.34. Such a settlement was, and is, in the best interest of the Companies as
5 a method to mitigate any effects that the tribal claims may have on their rights and to
6 avoid any prolonged litigation. The Agreement serves as "full satisfaction of all water
7 rights or claims to water rights of the Tribes, its members, and its allottees within the
8 Upper Snake River Basin." Agreement, Art. 10.4. As water users who could be impacted
9 by the tribal claims, and who were represented during the settlement of those claims by
10 the Committee of Nine, the Companies have an interest in the Agreement and any
11 challenges to it.
12

13
14 The objections which have been filed to the Agreement and have not yet
15 been resolved threaten to negate the settlement effort and subject the Companies' rights
16 to extended exposure under the claims. This would necessarily involve additional effort
17 and expense. Under such circumstances, it is clear that the Companies' interest is "of
18 such a direct and immediate character that [they] will either gain or lose by the direct
19 legal operation and effect of the judgment" regarding the objections to the Agreement.
20 Green, 1 Idaho at 240; Buck, 15 Idaho at 54, 96 P. at 214. Therefore, the disposition of
21 the objections "may as a practical matter impair or impede" the Companies' ability to
22 protect their interests. I.R.C.P. 24(a).
23

24 Furthermore, the Companies' interests are not adequately represented by
25 existing parties. On this question, it is enough to show that representation as to the
26 Companies "may" be inadequate. Duff v. Draper, 96 Idaho 299, 302, 527 P.2d 1257, 1260
27 (1974), aff'd, 98 Idaho 379, 565 P.2d 572 (1978). Certainly, that is the case here. While
28

1 the United States, the Shoshone-Bannock Tribes and the State of Idaho have filed joint
2 motions to dismiss the objections to the 1990 Fort Hall Indian Water Rights Agreement,
3 those parties do not represent the interests of the Companies. Water users, including the
4 Companies, as represented by the Committee of Nine, were recognized as a party
5 separate and distinct from the governmental entities involved in the negotiation and
6 settlement of the tribal claims. Agreement, Arts. 3.8, 4.34. So, too, should the interests
7 of the Companies be separately represented with regard to the objections lodged against
8 the Agreement. The Tribes, supported by the United States, have filed claims that have
9 the potential to negatively impact the Companies' rights, as explained above. The United
10 States has made clear that it operates "as trustee for the Tribes and for the benefit of the
11 federal Fort Hall Irrigation Project." Joint Memorandum Supporting Motions to Dismiss,
12 page 2 (February 23, 1995). In addition, the State of Idaho "is adverse to all water users
13 in the SRBA", including the Companies. Memorandum Decision on Basin-Wide Issue
14 No. 2, page 3 (November 7, 1994).

15
16
17 In short, none of the current parties to the subcases have a vested interest
18 in protecting the rights of the Companies. As a result, resolution of the pending
19 objections, without the involvement of the Companies, could result in prejudice to the
20 Companies' rights. While the Companies support the joint motions, only the Companies
21 can adequately represent their own interests in regard to the objections and their possible
22 consequences to the Companies' rights.
23

24 Finally, the motion to participate is timely filed. When, and since, the
25 Agreement was signed and subsequently approved by Congress in 1990, the Companies
26 have expected the Agreement to serve as the basis for a partial decree. Even when
27 objections were filed to the Director's Report, all but nine were disposed of by
28
MEMORANDUM IN SUPPORT OF MOTION TO PARTICIPATE - 5

1 withdrawal or stipulation. Only the continued existence of the nine remaining objections,
2 which threaten the viability of the Agreement, have forced the Companies to seek to
3 participate in the subcases. In addition, since the motion to participate has been filed
4 before a trial on any of the subcases, it should be granted. See Anderson v. Ferguson,
5 56 Idaho 554, 57 P.2d 325 (1936)(petition to intervene timely when filed before trial);
6 Duff v. Draper, 96 Idaho 299, 527 P.2d 1257 (1974), aff'd, 98 Idaho 379, 565 P.2d 572
7 (1978)(motion for intervention timely when made the day before trial).
8

9 As a result, the criteria for right of intervention, as set forth in Rule 24(a)
10 have been satisfied by the Companies and the motion to participate in the above-
11 captioned subcases should be granted pursuant to Administrative Order 1, Rules of
12 Procedure, Rule 6.g.
13

14 In the alternative, the motion to participate should be granted, in the
15 court's discretion, under the criteria for permissive intervention, as set forth in Rule
16 24(b). Upon timely application, such intervention may be granted "when an applicant's
17 claim or defense and the main action have a question of law or fact in common."
18 I.R.C.P. 24(b). Consideration is also to be given to whether "the intervention will unduly
19 delay or prejudice the adjudication of the rights of the original parties." Id.
20

21 Common questions of law and fact exist between the Companies' claim in
22 this matter and the subcases themselves. The Companies support the joint motions to
23 dismiss the existing objections to the Fort Hall Agreement for much the same reasons
24 that the joint movants do, contrary to the legal and factual positions of the objectors.
25

26 In addition, as explained above, the motion is timely filed, and granting
27 intervention would not unduly delay the proceedings or prejudice the existing parties to
28 the subcases. The Companies' interest is to resolve the subcases, through the decreeing

1 of the Agreement, as soon as possible. The Companies believe their participation will
2 help facilitate a timely resolution of the matter and avoid the necessity of spending
3 additional time and resources to resolve the tribal claims.
4

5 As a result, the criteria for permissive intervention have been met and the
6 motion to participate should be granted pursuant to Administrative Order No. 1, Rules
7 of Procedure, Rule 6.g.

8 DATED this 13th day of March, 1995.

9 ROSHOLT, ROBERTSON & TUCKER

10
11 By: John A. Rosholt
12 John A. Rosholt

13
14 By: Norman M. Semanko
Norman M. Semanko

15 Attorneys for Twin Falls Canal Company
16 and North Side Canal Company
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CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of March, 1995, I served a copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO PARTICIPATE, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

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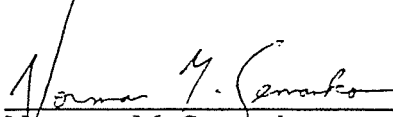

Norman M. Semanko

EXHIBIT "A"

- A. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A01-00209 in the amount of 3,000 cfs, with a priority date of October 11, 1900.
- B. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A01-00004 in the amount of 600 cfs, with a priority date of December 22, 1915.
- C. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A47-04376 in the amount of 306 cfs, with a priority date of March 15, 1912.
- D. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A01-00010 in the amount of 180 cfs, with a priority date of April 1, 1939.
- E. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A01-10045A in the amount of 97,183 acre-feet, with a priority date of May 24, 1913.
- F. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A01-10042A in the amount of 150,000 acre-feet, with a priority date of March 29, 1921.
- G. Twin Falls Canal Company Notice of Water Right Claim, Identification No. A01-02064A in the amount of 1,185 acre-feet, with a priority date of March 30, 1921.
- H. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-00210z0 in the amount of 400 cfs, with a priority date of October 11, 1900.
- I. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-00212z0 in the amount of 2,250 cfs, with a priority date of October 7, 1905.
- J. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-00215 in the amount of 500 cfs, with a priority date of June 2, 1909.
- K. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-00220 in the amount of 3,000 cfs, with a priority date of June 29, 1910.
- L. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-00005 in the amount of 300 cfs, with a priority date of December 23, 1915.

- M. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-00016 in the amount of 1,260 cfs, with a priority date of August 6, 1920.
- N. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-10045B in the amount of 312,007 acre-feet, with a priority date of May 24, 1913.
- O. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-10043A in the amount of 116,600 acre-feet, with a priority date of March 29, 1921.
- P. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-10042B in the amount of 9,400 acre-feet, with a priority date of March 29, 1921.
- Q. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-02064C in the amount of 387,814 acre feet, with a priority date of March 30, 1921.
- R. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A01-10053A in the amount of 108,980 acre-feet, with a priority date of March 30, 1921.
- S. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A37-00507 in the amount of 15 cfs, with a priority date of June 15, 1890.
- T. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A37-04240 in the amount of 25 cfs, with a priority date of March 1, 1910.
- U. North Side Canal Company, Ltd. Notice of Water Right Claim, Identification No. A37-04241 in the amount of 10 cfs, with a priority date of March 1, 1910.

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