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DEPARTMENT OF
WATER RESOURCES

**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 Nos.: 01-10614, 01-10615, 01-10616, 01-10617, 01-10618, 01-10620, 01-10621, 01-10622, 01-10623 and 21-13161

**SURFACE WATER COALITION'S
OPPOSITION TO UNITED
WATER'S MOTION TO
PARTICIPATE IN LATE STORAGE
CLAIM SUBCASES PENDING IN
BASINS 01, 21, 37 AND 65**

COME NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (hereinafter collectively referred to as "Surface Water Coalition" or "Coalition"), by and through counsel of record, and submit this opposition to

*United Water's Motion to Participate in Late Storage Claim Subcases Pending in Basin 01, 21, 37 and 65.*¹

ARGUMENT

Although United Water admits that it does not have any water rights outside of Basin 63, the company claims that it should be able to participate in these proceedings due to "concerns" about affects to its interests in Basin 63. United Water recounts much of the history and arguments of the Basin Wide 17 proceedings and concludes that its participation in all subcases is appropriate. For the following reasons, United Water's motion should be denied.

United Water cannot show that it meets the standard for intervention under Idaho Civil Rule of Procedure 24(a). First, the motion is not timely. Timeliness is not just about what has o : has not happened in a lawsuit. *See State v. United States*, 134 Idaho 106, 109 (2000) ("Timeliness of intervention is determined from all the circumstances: the point to which the suit has progressed is not solely dispositive"). In *State*, the Supreme Court upheld the SRBA Court's denial of a request to file a late response, holding:

A.O.1 § 4b provides an *absolute* rule for responses: "The objection or response must be received by the court by the deadline specified." (Emphasis in original.) Here the Irrigators did not file a response by either the initial deadline of September 1993 or the extended deadline of August 1995. By the plain language of the SRBA rules, the Irrigators' response was untimely and the special master correctly denied the motion to file the response. Therefore, the SRBA court did not abuse its discretion in affirming the denial.

Id. Here, United Water has done nothing in the nearly two years that these matters have been pending before the Court. The Court granted the Coalition's and Reclamation's motions to file late claims in May 2013. The Director filed his report with the Court in December 2013; objections were due March 20, 2014 and responses were due on May 22, 2014. Yet, United

¹ This opposition only addresses the late storage claims in Basins 01 and 21. The Coalition does not take a position on the Motion to Participate in Basins 37 or 65.

Water failed to file either an objection or response to meet these “absolute” deadlines. In fact, as to Basin 63 – the only Basin that it has any water rights in – United Water further has to seek leave from the Court to file a late response in those subcases. Again, however, it failed to submit any request to participate in the Basin 01 or 21 proceedings until now.

Second, and most importantly for the Court’s review, United Water does not have any interest in these proceedings. Under Rule 24(a) United Water must show that: (1) a statute confers an unconditional right to intervene; or (2) that it claims an interest relating to the subject of the action and that the interest would be impaired by a disposition of the action. I.R.C.P. 24(a). Since there is no statute granting United Water an unconditional right to intervene, the company must claim an interest relating to the subcases. United Water identifies the issue it is concerned about as follows:

The whole point of these late claims is to create rights to refill reservoir space vacated for flood control under a more senior priority dates [sic] than could be obtained by filing a new appropriation for that purpose today.

United Motion at 6.

United Water mischaracterizes the late claims to create its so-called “interest.” Contrary to the company’s theory, the late claims do not seek to establish a right to “refill” under the priority of the primary storage rights. Rather, they are beneficial use claims that will succeed (or fail) based on their individual factual records. Furthermore, the above late claims are based on a distinct factual record, with distinct priority dates and distinct diversion rates/volumes. United Water claims no “interest” as to any storage water rights, or any water rights for that matter, in Basins 01 and 21 above Milner Dam. Just because these late claims are of a “same type” of claim as made in Basin 63, does not mean that United Waters has any interest in the subject of the Basin 01 and 21 storage water right claims.

For this same reason, United Water cannot show that any of its interests will be impaired by these proceedings. Indeed, United Water admits that it does not have any water rights above Milner Dam. Whether or not the Basin 01 and 21 late claims are decreed as claimed, decreed with extra conditions or limitations or are disallowed will depend entirely on the factual record developed in each individual subcase. The same goes with the late claims in Basin 63 – i.e. they will be evaluated on their own factual record. United Water appears to be concerned that a decision from this Court relating to these late claims may somehow apply to the late claims in Basin 63. Yet, as with the late claims in Basin 63, these late claims will succeed (or fail) based on their own distinct factual record before the respective special masters. If there is any conflict in the future between any rulings, this Court will stand in a position to resolve such matters. As for now United Water's alleged concerns are nothing more than mere speculation and do not support a request for participation since it does not create any interest in the Basin 01 and 21 subcases.

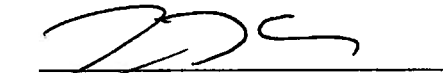
United Water asserts that its interests are not adequately represented in these proceedings. Yet, as discussed above, it has no interest to be protected. To the extent that United Water wishes to make arguments that storage rights may not refill in priority that issue is not before the Court in these proceedings. In any request, however, United Water admits that the State takes the same position as to the validity of these late claims – that the late claims must be subordinated to all junior priority water rights. United Water's participation is not needed to advance these arguments.

Finally, United Water claims that it meets the standard for permissive intervention. In doing so, it relies on the same misguided arguments addressed above. In the end, it cannot show that it has the interest necessary to support participation in these proceedings.

Accordingly, for the foregoing reasons, the Court should deny United Water's motion to participate in these proceedings.

DATED this 6th day of November, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2014, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S OPPOSITION TO UNITED WATER'S MOTION TO PARTICIPATE IN LATE STORAGE CLAIM SUBCASES PENDING IN BASINS 01, 21, 37 AND 65** on the person(s) listed below by U.S. Mail and/or electronic mail:

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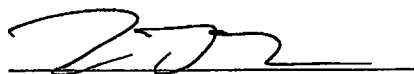
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