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ATTORNEYS FOR THE CITY OF POCATELLO

**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. 36-07694
	) Subcase No. 36-02551
	)
Case No. 39576	) CITY OF POCATELLO'S MOTION TO
	) PARTICIPATE AND MEMORANDUM IN
	) SUPPORT THEREOF
	)

COMES NOW, the City of Pocatello ("City" or "Pocatello"), by and through their counsel of record, and submits this *Motion to Participate and Memorandum in Support Thereof* in the above-captioned subcase pursuant to this Court's Administrative Order No. 1 ("AO1"), section 10(k) and Idaho Rule of Civil Procedure ("I.R.C.P.") 24.

STANDARD OF REVIEW

SRBA Administrative Order 1, section 10(k) provides in relevant part:

Any party to the adjudication who is not a party to a subcase may seek leave to participate in a subcase by filing a timely *Motion to Participate*. A *Motion to Participate* shall be treated like a motion to intervene under I.R.C.P. 24 and shall be decided by the Presiding Judge or the assigned Special Master.

Id. (emphasis added). AO1 section 2(q) defines “[p]arty to the [a]djudication” as “[a]ny claimant as defined in I.C. §§ 42-1401A(1) and (6).” I.C. § 42-1401A(1) defines claimant as “any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.”

In order to intervene as a matter of right, an applicant must: 1) file a timely motion; 2) claim an interest in the property or transaction which is the subject of the action; 3) demonstrate that it is so situated that the outcome will impair or impede its ability to protect that interest; and 4) demonstrate that interest is not adequately represented by existing parties. I.R.C.P. 24(a). Pocatello meets all four requirements of this test for intervention as of right. As such, Pocatello respectfully requests this Court grant Pocatello’s *Motion to Participate*.

I.R.C.P. 24(b) also provides for permissive intervention, and states that:

[u]pon 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 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.

ARGUMENT

I. POCATELLO MEETS THE STANDARDS UNDER RULE 24(a) FOR MANDATORY INTERVENTION.

A. Pocatello's Motion to Participate is Timely.

Pocatello's Motion is timely due to the early stage of this litigation, and it is filed over five weeks before a hearing is set in this matter on April 21, 2015.

B. Pocatello claims an interest relating to the Property which is the subject of the Action.

Rangen has made a delivery call based on the water rights in these subcases, which calls for curtailment of certain of Pocatello's junior water rights. Rangen's Motion seeks to change the elements of its decreed water rights by adding new sources of water and expanded points of diversion. Allowing Rangen to set aside its partial decree could increase Pocatello's liability in the face of a delivery call. As such, it has an important interest in litigating the nature and extent of the water rights claims made in these cases.

Further, Pocatello is a claimant in the SRBA. It owns and operates ground and surface water rights that are both junior and senior to those claimed by the claimants in the captioned cases. Because Pocatello's rights are derived from the same source or sources as the claimants in the captioned matters, its interests in this matter are more than generalized. It is entitled to participate in these cases to protect its junior water rights.

C. The Outcome of This Subcase will Affect the City of Pocatello's Water Rights and No Party to This Subcase Adequately Represents Pocatello's Rights.

As described above, Pocatello's water rights will be affected by the determination of Rangen's Motion. The Idaho Supreme Court has held that the petitioner in intervention is not required to show that it *is* bound by the judgment in the main action, but that it *may* be bound by a judgment in the action. *Duff v. Draper*, 96 Idaho 299, 302, 527 P.2d 1257, 1260 (1974)

(emphasis added.) Further, because Pocatello's ground water is subject to administrative delivery calls made by Rangen, the disposition of this matter has the potential to impair or impede Pocatello's ability to protect its water rights.

There is no party to this subcase that can adequately represent Pocatello's rights. Pocatello is not a member of IGWA. In *Duff*, the Idaho Supreme Court held that the petitioner in intervention is not required "to show that the [existing] representation 'is' inadequate It [is] sufficient that the petitioner show that the representation 'may' be inadequate and that the applicant 'may' be bound by a judgment in the action." *Id.* No other party to the SRBA owns or operates Pocatello's water rights or has the duty to provide Pocatello's water customers with a water supply. As such, there is no party presently involved in this adjudication that can adequately represent Pocatello's rights.

II. THE CITY OF POCATELLO SATISFIES THE REQUIREMENTS OF I.R.C.P. 24(b).

Under I.R.C.P. 24(b), "[u]pon 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." The decision to allow permissive intervention is discretionary with the Court and it must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.*; see also *Idaho v. United States*, 134 Idaho 106, 110, 996 P.2d 806, 810.

As described above, Pocatello's ground water rights stand to be affected by the outcome of Rangen's Motion, and this interest satisfies the commonality requirement of I.R.C.P. 24(b). Additionally, given the current stage of litigation in this subcase, Pocatello's intervention will not unduly delay nor prejudice the rights of any existing parties. Given the timing of Pocatello's *Motion to Participate* and the relatively early stage of this litigation, Pocatello's participation

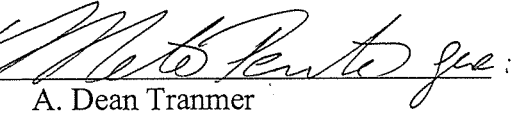
causes no prejudice to any party. Therefore, Pocatello respectfully requests that, in the alternative to granting its *Motion to Participate* as of right, this Court grant such participation pursuant to I.R.C.P. 24(b).

CONCLUSION

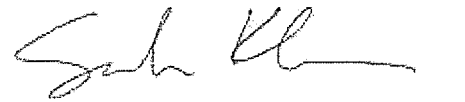
Pocatello respectfully requests this Court grant its *Motion to Participate* as a matter of right pursuant I.R.C.P 24(a). Alternatively, Pocatello request permission to intervene pursuant to I.R.C.P. 24(b).

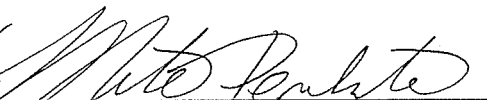
Dated this 12th day of March, 2015.

CITY OF POCATELLO ATTORNEY'S OFFICE

By 
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WHITE & JANKOWSKI

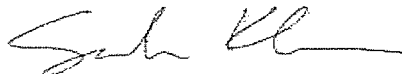
By 
Sarah A. Klahn

By 
Mitra M. Pemberton

ATTORNEYS FOR CITY OF POCATELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2015, I caused to be served a true and correct copy of the foregoing **CITY OF POCA TELLO'S MOTION TO PARTICIPATE AND MEMORANDUM IN SUPPORT THEREOF** Case No. 39576, Subcase No. 36-07694 and Subcase No. 36-02551 upon the following by the method indicated:



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