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DEPARTMENT OF
WATER RESOURCES

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Partnership, L.P., and System Global Timberlands,
LLC*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re CSRBA

Case No. 49576

Subcase No. 91-07624

MOTION TO PARTICIPATE

COMES NOW Boston Timber Opportunities, LLC, Golden Pond Timberlands, Inc., Hancock Timberland XI, Inc., John Hancock Life Insurance Company (U.S.A.), John Hancock Life Insurance Company – Account 72 (U.S.A.), SFG HCK Timber Partnership, L.P., and System Global Timberlands, LLC (collectively referred to herein as the “Hancock Entities”), by and through their attorney of record, Chris M. Bromley, of the firm McHugh Bromley, PLLC, and hereby moves Special Master Brigitte Bilyeu, pursuant to A.O.1, to grant its *Motion to Participate* in subcase no. 91-07624. As successors-in-interest to Patriot Investments, LLC

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(“Patriot”), the Hancock Entities¹ are “party” to the Coeur d’Alene-Spokane River Basin Adjudication (“CSRBA”) and should be allowed to participate in the above-captioned subcase.

I. INTRODUCTION

On July 8, 2008, the State of Idaho initiated the CSRBA by “filing a petition to commence an adjudication of the Coeur d’Alene-Spokane River Basin water system (*Petition*)” . . . “ *Commencement Order for the Coeur d’Alene-Spokane River Basin General Adjudication* (“Commencement Order”) at 1. On November 12, 2008, the Court entered its *Commencement Order*. On August 19, 2011, consistent with Idaho Code § 42-1408, and as evidenced by the *Affidavit of Service of Commencement Notice – Property Owners within Shoshone County and within IDWR’s Administrative Basins 91, 92, or 94* (“Affidavit of Service”) the Idaho Department of Water Resources (“IDWR”) notified the public in Basin 91 of the commencement of the CSRBA. *Attachment D* to the *Affidavit of Service* provided actual notice of the CSRBA to owners of “real property on the real property assessment roll,” Idaho Code § 42-1408(2)(d), within Basins 91, 92, or 94 of the Adjudication. *Affidavit of Service* at 3. As an owner of real property in Basin 91, Patriot was provided actual notice of the CSRBA. *Attachment D* to the *Affidavit of Service* at 125. The Hancock Entities, among others, *see* footnote 2 *infra*, are the successors-in-interest to Patriot.

On March 26, 2014, the United States of America filed a claim for the above-captioned subcase. On March 27, 2014, IDWR filed a *Notice of Filing Federal Reserved Water Right Claims in the Coeur d’Alene-Spokane River Basin Adjudication*, which included the claim at

¹ McHugh Bromley, PLLC also represents Hancock Timberland X, Inc., which is a successor-in-interest to Patriot Investments, LLC, and one of the Hancock Entities. Hancock Timberland X, Inc. filed a *Motion for Late Claim* and a *Motion for Late Objection* with the Court regarding the above-captioned subcase. On August 19, 2015, the Court granted Hancock Timberland X, Inc.’s *Motion for Late Claim*. On August 31, 2015, the Court granted Hancock Timberland X, Inc.’s *Motion for Late Objection*. By virtue of its objection, Hancock Timberland X, Inc. is already party to this subcase. A.O.1.2.q. Because Hancock Timberland X, Inc. is already party to this subcase, it is not included in the list of Hancock Entities on whose behalf the present *Motion to Participate* is being filed.

issue. Objections to the above-captioned subcase were to be filed by September 29, 2014, with responses due by November 28, 2014. On February 17, 2015, by *Order of Reference*, this matter was assigned to the Special Master. On April 1, 2015, an initial hearing was held, and a schedule was entered. Since the initial hearing, the parties to the subcase have participated in moderated settlement conferences with Special Master Booth.

II. ARGUMENT

A “party” to the CSRBA is defined as “any person who is a claimant or any person who is served or joined.” Idaho Code § 42-1401A(6); A.O.1.2.r. (emphasis added). Patriot was made party to the CSRBA by service. As successors-in-interest to Patriot, the Hancock Entities are therefore party to the CSRBA. As party, the Hancock Entities may move to participate in this subcase:

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.

A.O.1.11.i.

On February 17, 2015, this subcase was assigned to the Special Master; therefore, this *Motion to Participate* is properly before the Special Master.

If a motion to participate is granted, the movant becomes a “Party to a Subcase,” which is defined, in pertinent part, as follows:

Party to a Subcase – The Claimant, any Objector or Respondent to a water right Recommendation, and Party to a Subcase which has been consolidated with another Subcase, any Party to the Adjudication granted leave to participate in a Subcase by the Presiding Judge or a Special Master. A Party to the Adjudication who does not file an objection, a response or a timely *Motion to Participate* waives the right to be a Party to the Subcase

A.O.1.2.q.

By filing this *Motion to Participate*, the Hancock Entities wish to become party to this subcase. In order to prevail on the *Motion to Participate*, the Hancock Entities must meet the requirements of I.R.C.P. 24. A.O.1.11.i. Under I.R.C.P. 24(a), intervention may be had by “right,” or, under I.R.C.P. 24(b) it may be granted “permissive[ly].” As successors-in-interest to Patriot, the Hancock Entities own property and deferrable water rights and uses within the St. Joe Wild and Scenic River Basin. Because of this, intervention should be granted as a matter of right. Idaho Rule of Civil Procedure 24(a) provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the state of Idaho confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action 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.

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

Idaho Code § 42-1401A(6) is “a statute of the state of Idaho [that] confers an unconditional right” to Patriot’s successors-in-interest to intervene in this subcase. This *Motion* is timely because the subcase has only been active since April 1, 2015, with the most recent settlement conference occurring on September 10, 2015. The addition of the Hancock Entities will not prejudice the parties to the subcase. As will be explained, allowing the Hancock Entities to participate as parties will further the goals of the settlement. When Patriot was the landowner, Patriot had numerous conversations with the United States about the United States’ Wild and Scenic claim. Patriot later divested its interest in the lands. Some of the successors-in-interest filed claims for certain water uses, and also filed objections to this subcase.² The claims and

² In addition to the claim and objection that was filed by Hancock Timberland X, Inc., claims and objections were filed by Carmona Tristar, LLC, Cherry Tree Timber, LLC, Jackson Timberland Opportunities-Tristar, LLC, and Jamestown Forestlands, LLC. If the Hancock Entities’ *Motion to Participate* is granted, all private landowners in the St. Joe Wild and Scenic River Basin will be party to this subcase, thereby furthering the goals of settlement.

objections that have been filed by some of Patriot's successors-in-interest highlight the fact that each individual owner has different interests for their own private lands, water rights, and water uses. Thus, the interests of each Hancock Entity cannot be adequately represented by the existing parties. The Hancock Entities who did not file claims are the owners of deferrable water rights and uses within the St. Joe Wild and Scenic River Basin. As successors-in-interest to Patriot, and by filing this *Motion to Participate*, the Hancock Entities wish to become "Party to th[is] Subcase." A.O.1.2.q.

III. CONCLUSION

Wherefore, pursuant to A.O.1, Boston Timber Opportunities, LLC, Golden Pond Timberlands, Inc., Hancock Timberland XI, Inc., John Hancock Life Insurance Company (U.S.A.), John Hancock Life Insurance Company – Account 72 (U.S.A.), SFG HCK Timber Partnership, L.P., and System Global Timberlands, LLC respectfully move the Special Master to grant their *Motion to Participate*.

RESPECTFULLY SUBMITTED this 18th day of September, 2015.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Hancock Timberland X, Inc.

CERTIFICATE OF SERVICE

I certify that on this 18th day of September, 2015, I caused to be served a true and correct copy of the foregoing on the parties to subcase no. 91-07624, by placing the foregoing in the United States Mail, and also electronically mailing said document to the below email addresses:

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