

RECEIVED

APR 17 2019

DEPARTMENT OF
WATER RESOURCES

Matthew J. McGee, ISB No. 7979
SPINK BUTLER, LLP
251 E. Front Street, Suite 200
Boise, ID 83702
P.O. Box 639
Boise, ID 83701
Telephone: 208/388-1000
Facsimile: 208/388-1001
mmcgee@spinkbutler.com

Fritz Haemmerle, ISB No. 3862
HAEMMERLE LAW, PLLC
PO Box 1800
Hailey, ID 83333
Telephone: 208/578-0520
Facsimile: 208/578-0564
haemmerlefilings@gmail.com

Attorneys for the City of Mountain Home

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.

)
) Subcases 63-33734A, and 63-33734B; 63-
) 303, 63-3613, 63-3614 and 63-3618; and
) 63-33732, 63-33733, 63-33734, 63-33737
) and 63-33738
)

) MOTION TO PARTICIPATE

COMES NOW, the City of Mountain Home (the "City"), by and through undersigned counsel, hereby submits this Motion to Participate. The City owns ground water rights decreed in the Snake River Basin Adjudication ("SRBA").¹ The City files this Motion to Participate in the State of Idaho's ("State") Motion to Decree Water Rights 63-33734A, and 63-33734B; and

¹ The City has ten ground water rights: 61-2072, 61-2167, 61-2170, 61-2188, 61-2210, 61-7151, 61-7152F, 61-7184, 61-7339 and 61-7439.

State's Motion to Alter or Amend following subcases 63-303, 63-3613, 63-3614 and 63-3618, which motions were filed in all of the above-captioned subcases.

Attached to this Motion are the pleadings or documents the City would file and advance if allowed to participate: Exhibit 1 – I.R.C.P. 12(b)(1)(2)(4)(5) and (6) Motion to Dismiss the State's Motion to Dismiss the Motion to Decree Water rights 63-33734A and 63-33734B and State's Motion to Alter or Amend Water Rights 63-303, 63-3613, 63-3614 and 63-3618; and (3) Exhibit 2 - Brief in Support of Motion to Dismiss.

If the Court does not dismiss 63-33732, 63-33733, 63-33734, 63-33737 and 63-33738, the City requests the ability to participate in these water rights on the basis that they seem part and parcel with the other subcases which are part of this Motion.

I. The Court Should Grant Intervention as a Matter of Right.

As set forth in the attached Exhibit 2, incorporated herein, the bare existence of Subcase Nos. 63-33734A and 63-33734B is procedurally defective, as is a Motion to Decree Water Rights in such subcases where there has been no Claim or Director's Report. Regardless, the City of Mountain Home is entitled to participate under the Court's Rules in AO1, which allow participation in a subcase under the following standard:

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.

AO1.10.k. Rule 24 allows intervention as a matter of right and also by the Court's permission.

Under Rule 24(a), an applicant has the right to intervene if: (1) the motion is timely, (2) the applicant claims an interest relating to the property or transaction which is the subject of the action, (3) the applicant is so situated that the disposition of the action may as a practical matter impair or impeded applicant's ability to protect that interest, and (4) the applicant's interest is not adequately represented by existing parties. The City of Mountain Home satisfies this standard.

First, the motion is timely. The two new subcases have only apparently been opened in this Court as of February 2019. Indeed, it appears as if new subcases were created upon the filing of the State's Motion to Decree Water Right, without any notice or objection period relating to the proposed subcases, a matter addressed in more detail in the Exhibit 2, incorporated herein by reference, attached and filed contemporaneously herewith.

Second, the City claims an interest relating to the property or transaction which is the subject of the action. The property or transaction at issue is the proposed decreed water rights, 63-33734A and 63-33734B. These water rights allegedly have priority dates of 1965 and 1973, respectively, and claim enormous quantities of water. Elmore County was recently issued a *Preliminary Order Approving Permit Upon Conditions (Preliminary Order)* in proceedings relative to Application for Permit No. 63-34348. The purpose of the Permit, among other uses, is ground water recharge near the City of Mountain Home. *See, Declaration of Terry Scanlan.* The recharge would benefit groundwater rights in the Mountain Home area.

Third, the City is so situated that the disposition of the action may as a practical matter impair or impede the City's ability to protect that interest. As stated in the *Preliminary Order*, water right 63-34348 would be subordinated to "refill 1" (proposed decreed water right 63-33734A) and "refill 2" (proposed decreed water right 63-33734B.). These proposed water rights are currently before the Court on a Motion to Decree filed by the State of Idaho. Consistent with the *Preliminary Order*, both of the proposed water rights under 63-33734A and 63-33734B would be senior in priority as compared to Elmore County Permit 63-34348. Since the proposed quantities authorized for storage under water rights 63-33734A and 63-33734B are 3,672,732 AFY and 587,056 AFY, respectively, depending upon how the Department interprets and administers the proposed water rights as conditioned, it is possible that the ability to divert otherwise unappropriated water from the South Fork Boise River for aquifer recharge in the City

of Mountain Home (whether pursuant to development under the Permit or otherwise) will be impaired, injuring and affecting the City's rights and Elmore County's Permit. *See, Declaration of Terry Scanlon.*

Fourth, the City's interest is not adequately represented by existing parties. At this stage, no party other than the State has appeared in the two new subcases at issue, and the remaining non-State parties noticed on the certificate of service consist entirely of irrigators and other interested parties located in the Treasure Valley. Also, the City was obviously not privy to the negotiation that resulted in a stipulated proposed decreed water right of approximately 3.6 million acre feet that is only subordinate to uses within Basin 63. Finally, none of the parties to the stipulation are water users in the Mountain Home area, or in any administrative basin other than Basin 63.

II. The Court Should Grant Permissive Intervention.

The City also satisfies the criteria for permissive intervention under Rule 24(b). That rule "allows permissive intervention by a person'[u]pon timely application' and 'when an applicant's claim . . . and the main action have a question of law of fact in common.'" For all the reasons mentioned, the Court should grant permissive intervention.

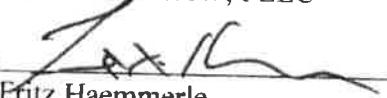
The Motion is very timely and would not unduly delay or prejudice the adjudication of the rights of the other parties.

DATED this 15th day of April 2019.

SPINK BUTLER, LLP

By: 
Matthew J. McGee

HAEMMERLE LAW, PLLC

By: 
Fritz Haemmerle

CERTIFICATE OF MAILING

I certify that on April 15, 2019, I mailed the original and copies of these Motions to Dismiss, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

☒ HAND DELIVERY

2. One copy to the claimant of the water right at the following address:

David W. Gehlert
United States of America Acting through
Bureau of Reclamation
Regional Director PN Code -3100
1150 N. Curtis Rd, Ste 100
Boise, ID 83706-1234FN Code-3100

☒ U.S. Mail, postage prepaid

David W. Gehlert
Environment & Natural Resources
U.S. Department of Justice
999 18th St.
South Terrace Ste 370
Denver, CO 80294

☒ U.S. Mail, postage prepaid

3. Copies to:

Director of IDWER
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, postage prepaid

Chief, Natural Resources Division
Office of Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☒ U.S. Mail, postage prepaid

United States Department of Justice

Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid

Albert Barker
Shelley Davis
BARKER ROSHOLT
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139

☒ U.S. Mail, postage prepaid

Andrew J. Waldera
Daniel Steenson
S. Bryce Farris
SAWTOOTH LAW OFFICES, PLLC
1101 W. River St., Ste. 110
P.O. Box 7985
Boise, ID 83707

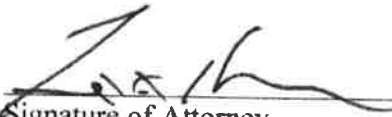
☒ U.S. Mail, postage prepaid

Christopher Meyer
Michael P. Lawrence
GIVENS PURSLEY
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

☒ U.S. Mail, postage prepaid

USDI Bureau of Reclamation
By: US Department of Justice
Environmental & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid



Signature of Attorney

EXHIBIT 1

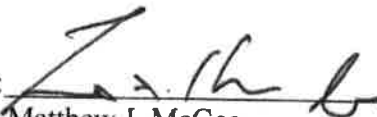
**I.R.C.P. 12(b)(1)(2)(4)(5) and (6) MOTION TO DISMISS STATE'S MOTION TO
DECREE WATER RIGHT 63-33734A and 63-33734B AND STATE'S MOTION TO
ALTER OR AMEND 63-303, 63-3613, 63-3614 and 63-3618 - 1**

Motion to Dismiss State's Motion to Decree water rights 63-33734A and 63-33734B and Motion to Dismiss State's Motion to Alter or Amend 63-303, 63-3613, 63-3614 and 63-3618.

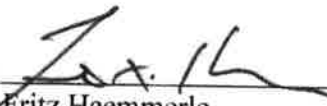
Oral argument is requested.

DATED this 13th day of April, 2019.

SPINK BUTLER, LLP

By: 
Matthew J. McGee
Attorneys for City of Mountain Home

HAEMMERLE LAW, PLLC

By: 
Fritz Haemmerle
Attorneys for City of Mountain Home

CERTIFICATE OF MAILING

I certify that on April 15, 2019, I mailed the original and copies of these Motions to Dismiss, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

☒ HAND DELIVERY

2. One copy to the claimant of the water right at the following address:

David W. Gehlert
United States of America Acting through
Bureau of Reclamation
Regional Director PN Code -3100
1150 N. Curtis Rd, Ste 100
Boise, ID 83706-1234FN Code-3100

☒ U.S. Mail, postage prepaid

David W. Gehlert
Environment & Natural Resources
U.S. Department of Justice
999 18th St.
South Terrace Ste 370
Denver, CO 80294

☒ U.S. Mail, postage prepaid

3. Copies to:

Director of IDWER
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, postage prepaid

Chief, Natural Resources Division
Office of Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☒ U.S. Mail, postage prepaid

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid

Albert Barker
Shelley Davis
BARKER ROSHOLT
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139

☒ U.S. Mail, postage prepaid

Andrew J. Waldera
Daniel Steenson
S. Bryce Farris
SAWTOOTH LAW OFFICES, PLLC
1101 W. River St., Ste. 110
P.O. Box 7985
Boise, ID 83707

☒ U.S. Mail, postage prepaid

Christopher Meyer
Michael P. Lawrence
GIVENS PURSLEY
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

☒ U.S. Mail, postage prepaid

USDI Bureau of Reclamation
By: US Department of Justice
Environmental & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid



Signature of Attorney

EXHIBIT 2

**Fritz Haemmerle, ISB No. 3862
HAEMMERLE LAW, PLLC
PO Box 1800
Hailey, ID 83333
Telephone: 208/578-0520
Facsimile: 208/578-0564
haemmerlefilings@gmail.com**

**Matthew J. McGee, ISB No. 7979
SPINK BUTLER, LLP
251 E. Front Street, Suite 200
Boise, ID 83702
P.O. Box 639
Boise, ID 83701
Telephone: 208/388-1000
Facsimile: 208/388-1001
mmcgee@spinkbutler.com**

Attorneys for City of Mountain Home

**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. 63-33734A and 63-33734B; 63-**
) **303, 63-3613, 63-3614 and 63-3618.**

) **BRIEF IN SUPPORT OF I.R.C.P.**
) **12(b)(1)(2)(4)(5) and (6) MOTION TO**
) **DISMISS STATE'S MOTION TO**
) **DECREE WATER RIGHT 63-33734A and**
) **63-33734B; and STATE'S MOTION TO**
) **ALTER OR AMEND 63-303, 63-3613, 63-**
) **3614 and 63-3618**
)
)
)

COMES NOW, the City of Mountain Home (the "City"), by and through undersigned
counsel, and pursuant to I.R.C.P. 12(b)(1)(2)(4)(5) and (6), and hereby moves to dismiss the

**BRIEF IN SUPPORT OF I.R.C.P. 12(6) (1)(2)(4)(5) and (6) MOTION TO DISMISS
STATE'S MOTION TO DECREE WATER RIGHT 63-33734A and 63-33734B; and
STATE'S MOTION TO ALTER OR AMEND 63-303, 63-3613, 63-3614 and 63-3618 - 1**

State's Motion to Decree water rights 63-33734A and 63-33734B; and State's Motion to Alter or Amend 63-303, 63-3613, 63-3614 and 63-3618.

I. SUMMARY OF MOTIONS TO DISMISS

The City is concerned with the proposed rubber-stamp process sought by the State in its Motions. First, there are no so-called subcases 63-33734A and 63-33734B. No claim or Director's Reports have ever been filed for these "subcases." These subcases do not appear on the SRBA website. Furthermore, there has never been a Motion to Amend any right, resulting in these subcases now being identified as subcase 63-33734A and 63-33734B. Otherwise, the City adopts the Statement of Fact and Procedural History contained in the City of Boise's Motion to Participate.

Second, so-called "subcases" 63-33734A and 63-33734B were not retained as a "Pending Subcase" in the Snake River Basin Adjudication (SRBA) *Final Unified Decree, Order Regarding Subcases Pending Upon Entry of Final Unified Decree*. The Court has no jurisdiction to consider subcases 63-33734A and 63-33734B. Second, no Director's Reports were ever issued for water rights 63-33734A and 63-33734B. For that reason alone, the motion should be denied and the subcases dismissed.

Third, the City has concerns about numerous elements of the proposed water rights, in addition to various negotiated conditions and limitations, and should be afforded the opportunity to file an objection and participate, in accordance with AO1, in the event the claimant can make a valid and timely claim to such water right at all.

As to water rights 63-303, 63-3613, 63-3614 and 63-3618, these rights have been decreed. The amendments for these decreed water rights include administrative provisions that were not included in the decrees. *See*, State's Motion, Stipulation, p. 4. The same provisions also contain references to water rights 63-33734A and B. Again, these water rights have not been claimed and no director's reports have been issued. Also, there is no basis to amend the rights under a Motion to Alter or Amend procedure.

Therefore, in the event the Court is not inclined to simply deny the motion and dismiss the above-captioned subcase, the City requests an order requiring the claimant, and the various parties to the Stipulation appended to the Motion to Decree Water Right, to comply with Idaho law and AO1.

II. ARGUMENT

A. Subcases 63-33734A and 63-33734B cannot be decreed.

1. Under the *Final Unified Decree*, the Court has No Jurisdiction to Consider Subcases 63-33734A and 63-33734B.

On August 26, 2014, the District Court entered a *Final Unified Decree (Decree)* in the SRBA, Twin Falls County Case No. 39576. In that *Decree*, the Court issued an *Order Regarding Subcases Pending Upon Entry of Final Unified Decree*. In that *Order*, the Court specified certain subcases where the Court retained jurisdiction. Subcases 63-33734A and 63-33734B were not listed as one of those subcases.

Subcase 63-33734A and 63-33734B are no different than any other subcases where the parties have attempted to have the Court rule on particular matters in an untimely manner. For example, *In Re Rangen*, 159 Idaho 798, 367 P.3d 193 (2016), Rangen used every conceivable

method to have the Court consider amendments to its Partial Decrees entered in subcases 36-02551 and 36-07694. The Court declined to amend the Partial Decree on a theory that amending the Partial Decrees would constitute an impermissible collateral attack on the Decrees. Because the SRBA Case was winding down, the Court also examined its pending Order and held that Rangen was too late in making any filings to amend the Partial Decrees.

This case is far more egregious than the case of *In Re Rangen*. The State is asking this Court to Decree water rights that have never been claimed, no Director's Reports ever issued, and the subcases were not reserved for determination in the Final Unified Decree.

2. There are no claims or Director's Reports for subcase numbers 63-33734A and 63-33734B, and therefore, the subcases cannot be Decreed

The above-captioned subcases should not exist, the motion should be denied, and no water rights should be decreed. There are procedures for filing claims and processing those claims in a General Adjudication, such as the SRBA. *See*, Title 42, Section 1401 et seq., "Adjudication of Claims."

Consistent with these statutory requirements, the SRBA adopted Administrative Order No. 1 (AO1). In accordance with AO1, a "subcase" is "[a] water right which is the subject of any post-Director's Report pleading." AO1.2.y. The issuance of a Director's Report is a condition precedent to the partial decree of a water right. "In this adjudication, the Director is 'an independent and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported. . . . The director shall make recommendations as to the extent of beneficial use and administration of each water right under state law.'" *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 741, 947 P.2d 409, 414 (1997) (citing I.C. § 42-

1401B(1). As far as the City is aware, there is no Director's Report for the respective proposed water right number 63-33734A and 63-33734B,¹ which Director's Report Idaho law requires. *See* I.C. § 42-1411. Furthermore, as far as the City is aware, no notice of claim for such water rights were filed with the Department, which notice Idaho law likewise requires. *See* I.C. § 42-1409. It remains unclear what procedural mechanism the State and the various parties to the attached stipulation (including the Director, on behalf of the Department of Water Resources) rely upon to file a motion to decree a water right in the SRBA for which there is not a timely claim or an issued Director's Report. The claimant failed to abide by the clear and unambiguous procedural requirements of Idaho law and the Snake River Basin Adjudication, and the State has compounded the procedural confusion by filing a motion to decree a water right for which no valid claim was filed and no Director's Report exists.

The Court should demand compliance with chapter 14, title 42, Idaho Code and AO1 with respect to the above-captioned proposed water right. As a claimant in the SRBA, the City and other claimants are entitled to object to a water right, or to a Director's Report "within the time specified in the notice of filing of the director's report." *See* I.C. § 42-1412. Because no Director's Report was published, no time for objection was established. Indeed, the City is not aware that SRBA claimants other than signatories to the Stipulation attached to the Motion to Decree Water Right were even provided notice of the above-captioned proposed water right's

¹ There is a Director's Report for 63-33734 without a listed source in the amount of 50,000 AFY and a priority date of June 1, 1968, and the water right has been recommended disallowed. The proposed water right no. 63-33734A appended to the Stipulation attached to the Motion to Decree Water Right has a source listed as the Boise River with a listed quantity in the amount of 3,672,732 AFY and a priority date of September 30, 1965.

existence.² Put simply, the result of the claimant's failure to abide by statutory claim requirements was that a Director's Report was never issued. That in turn deprived the City of due process, to which it is entitled as a claimant in the SRBA. *See, Lu Ranching Co. v. United States*, 138 Idaho 606, 609, 67 P.3d 85, 88 (2003) (publication of Director's Report provides notice to satisfy due process in SRBA).

Because there is no claim, no Director's Report, no post-Director's Report pleading, and thus no subcase, the City requests an order from the Court denying the motion to decree water right for failure to comply with Idaho law, and dismissing the above-captioned subcase.

B. The Court cannot Amend Water Rights 63-303, 63-3613, 63-3614 and 63-3618.

Water rights 63-303, 63-3613, 63-3614 and 63-3618 have been decreed. The *Final Unified Decree* did not retain jurisdiction over any of these water rights. *Decree, Order Regarding Subcases Pending Upon Entry of Final Unified Decree*. As such, the Court has lost jurisdiction to address these water rights.

The Motion to Alter or Amend process addressed in AO1 does not cover water rights which have been decreed. Motions to Alter or Amend are filed in response to recommendations made by Special Masters. AO1.13. Once Decreed, the only way for the SRBA Court to address a decreed right is under I.R.C.P. 60(a) or 60(b), or on transfer under Idaho Code Section 42-222. AO1.14.d; *see also*, I.C. 14-1420. There are no motions before the Court under these Sections.

Finally, citing *In Re Rangen*, this Court has previously held that placing additional

² A search on the SRBA's website reflects that, although a subcase no. 63-33734A exists, there is no associated Director's Report. In other words, even if a Director's Report does indeed exist, it is not available publically as such.

administrative provisions into decreed water constitutes a collateral attack on the decree and offends the finality that is required once decrees are entered. This Court held:

Indeed, allowing a water right holder to come back into the SRBA after the right has been decreed and then argue that it should be administered according to some particular methodology not otherwise provided in the partial decree would constitute an impermissible collateral attack on the partial decree. *Rangen*, 159 Idaho at 806, 367 P.3d at 201. Moreover, it would ignore the finality of the partial decree as the final unified decree in which the partial decree was incorporated.

Memorandum Decision and Order on Challenge, Subcase Nos. 63-33732 *et seq.*, dated September 1, 2016.

Based on well-established judicial decisions upholding the sanctity of the final decree, and not allowing collateral attacks on the decree, this Court should deny the Motion to Alter or Amend.

C. The Court Should Require Compliance With Idaho Law.

Even in the event the Court does not dismiss the above-captioned subcase, the Court should afford the City and any other claimant an adequate opportunity to be heard on objections relative to the proposed water right, regardless of whether the proper procedures have been followed to date respecting the issuance of a Director's Report.

The City is concerned with numerous elements set forth in the proposed water right, and several of the apparently negotiated limitations and conditions. Without limitation, the City objects to the identified quantity in excess of 3.6 million acre-feet, as well as the language that limits subordination only to "water rights established pursuant to Idaho law for uses within the IDWR Administrative Basin 63." The City has engaged an expert and reserves the right to

object to any and all other water right elements, and requests an order from this Court affording it the opportunity to assert such objections in accordance with the well-established procedures of AO1.

At this point, is not clear whether the State knows it is acting in complete violation of the procedures enacted by the SRBA Court and otherwise provided under the adjudication statutes enacted under Idaho Code Sections 42-1401 *et seq.* If it believes that it is exempt from Court rules and procedures, then the State should set forth the basis for its actions, with full opportunity of other water users to object and participate in these hearings.

D. The State lacks standing to bring these Motions.

The State is filing these Motion for claims made by the United States, Bureau of Reclamation. The State does not have a legal right in the subcases. Furthermore, based on the Stipulation filed, it clear that the Idaho Department of Water Resources and Director are not "parties." *See*, Stipulation, page 1, fn. 1. The test for standing in the State of Idaho is as follows:

Our Supreme Court has held that to invoke the trial court's jurisdiction in a declaratory judgment action, the plaintiffs must allege a "personal stake" in the outcome of the controversy, which "has come to be understood to require not only a 'distinct palpable injury' to the plaintiff, but also a 'fairly traceable' causal connection between the claimed injury and the challenged conduct." *Miles v. Idaho Power Co.*, 116 Idaho at 641, 778 P.2d at 763, *quoting Duke Power Co.*, 438 U.S. 59, 72, 98 S.Ct. 2620, 2629, 57 L.Ed.2d 595 (1978).

Idaho Branch Inc. of Associated Contractors of America, Inc. v. Nampa Highway District, No. 1, 123 Idaho 237, 242, 846 P.2d 239 (App. 1993).

Regardless of the outcome of the subcases, the State has no "personal stake" in the outcome of the subcases and would not suffer any "palpable injury" if these cases were not

decreed. The State's only so-called interest in these subcases is that it played a role in bringing the Stipulation before the Court, which could have been brought by any of the parties who actually claim an interest.

III. CONCLUSION

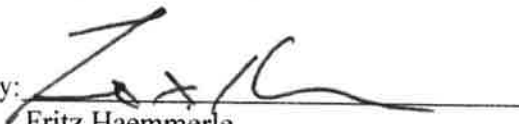
For the foregoing reasons, and pursuant to I.R.C.P.12(b)(1)(2)(4)(5) and (6), the City respectfully requests that the Court deny the Motion to Decree Water Right, and dismiss the above-referenced subcase until such time as the claimant has complied with Idaho law, if it can.

DATED this ____ day of April, 2019.

SPINK BUTLER, LLP

By: 
Matthew J. McGee
Attorneys for City of Mountain Home

HAEMMERLE LAW, PLLC

By: 
Fritz Haemmerle
Attorneys for City of Mountain Home

CERTIFICATE OF MAILING

I certify that on Apr. 11, 2019, I mailed the original and copies of these Motions to Dismiss, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

☒ HAND DELIVERY

2. One copy to the claimant of the water right at the following address:

David W. Gehlert
United States of America Acting through
Bureau of Reclamation
Regional Director PN Code -3100
1150 N. Curtis Rd, Ste 100
Boise, ID 83706-1234FN Code-3100

☒ U.S. Mail, postage prepaid

David W. Gehlert
Environment & Natural Resources
U.S. Department of Justice
999 18th St.
South Terrace Ste 370
Denver, CO 80294

☒ U.S. Mail, postage prepaid

3. Copies to:

Director of IDWER
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, postage prepaid

Chief, Natural Resources Division
Office of Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☒ U.S. Mail, postage prepaid

**BRIEF IN SUPPORT OF I.R.C.P. 12(6) (1)(2)(4)(5) and (6) MOTION TO DISMISS
STATE'S MOTION TO DECREE WATER RIGHT 63-33734A and 63-33734B; and
STATE'S MOTION TO ALTER OR AMEND 63-303, 63-3613, 63-3614 and 63-3618 - 10**

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

✓ U.S. Mail, postage prepaid

Albert Barker
Shelley Davis
BARKER ROSHOLT
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139

✓ U.S. Mail, postage prepaid

Andrew J. Waldera
Daniel Steenson
S. Bryce Farris
SAWTOOTH LAW OFFICES, PLLC
1101 W. River St., Ste. 110
P.O. Box 7985
Boise, ID 83707

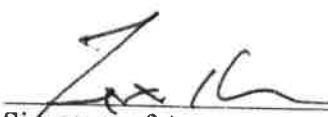
✓ U.S. Mail, postage prepaid

Christopher Meyer
Michael P. Lawrence
GIVENS PURSLEY
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

✓ U.S. Mail, postage prepaid

USDI Bureau of Reclamation
By: US Department of Justice
Environmental & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

✓ U.S. Mail, postage prepaid



Signature of Attorney

**BRIEF IN SUPPORT OF I.R.C.P. 12(6) (1)(2)(4)(5) and (6) MOTION TO DISMISS
STATE'S MOTION TO DECREE WATER RIGHT 63-33734A and 63-33734B; and
STATE'S MOTION TO ALTER OR AMEND 63-303, 63-3613, 63-3614 and 63-3618 - 11**