

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF IDAHO; IDAHO  
DEPARTMENT OF WATER  
RESOURCES; GARY SPACKMAN, *in  
his official capacity as Director of the  
Idaho Department of Water Resources,*

Defendants,

v.

IDAHO HOUSE OF  
REPRESENTATIVES; IDAHO  
SENATE; CHUCK WINDER, *in his  
official capacity as President Pro  
Tempore of the Senate;* MIKE MOYLE,  
*in his official capacity as Majority  
Leader of the House,*

Intervenor Defendants,

v.

JOYCE LIVESTOCK CO.; LU  
RANCHING CO.; PICKETT RANCH &  
SHEEP CO.; IDAHO FARM BUREAU  
FEDERATION,

Intervenor Defendants.

Case No. 1:22-cv-00236-DCN

**MEMORANDUM DECISION AND  
ORDER**

## I. INTRODUCTION

Before the Court is the Shoshone-Bannock Tribes' Motion for Leave to File Amicus Brief. Dkt. 38. Defendants State of Idaho, Idaho Department of Water Resources, and Director Gary Spackman (collectively "State of Idaho") filed a response opposing the Motion (Dkt. 39), which the Legislature Intervenor Defendants joined (Dkt. 40). The Tribes replied. Dkt. 41.

The Court finds that the decisional process would not be significantly aided by oral argument and will decide the motions on the briefs filed. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B).

For the reasons set forth below, the Court GRANTS the Tribes' Motion.

## II. BACKGROUND

In June 2022, the United States filed a complaint seeking declaratory and injunctive relief against Idaho for attempting to enforce recently enacted statutes that would adversely affect federal stockwater rights. Dkt. 1, ¶¶ 2–5. Specifically, the United States alleges that the Idaho statutes violate several federal and state constitutional provisions and offend federal sovereign immunity. *Id.*, ¶ 4.

Since the case began, several parties have successfully intervened, including the Idaho Senate, House of Representatives, and legislative officers (Dkt. 23), as well as a group of ranchers (Dkt. 42).

In December 2022, the Tribes filed the instant Motion. Dkt. 38. The State of Idaho—along with the Legislature—opposes the Motion and seeks either a denial or an express limitation on the Tribes' participation in the case. Dkt. 39, at 2; Dkt. 40.

### III. LEGAL STANDARD

District courts are given “broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).<sup>1</sup>

Despite not being binding on this Court, Federal Rule of Appellate Procedure 29 provides some guidance for determining what should be included in an amicus motion. Rule 29(a)(3) specifies that the amicus motion must explain (1) the movant’s interest and (2) why the brief is desirable to the Court and relevant to the case. Fed. R. App. P. 29(a)(3).

Additionally, the Ninth Circuit has held that the “classic role” of amici is to “(1) assist in a case of general public interest, (2) supplement the efforts of counsel, and (3) draw the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Lab. & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (cleaned up).

An amicus may not act like a party to the litigation. *Id.* Further, an amicus may not introduce additional causes of action. *WildEarth Guardians v. Jeffries*, 370 F. Supp. 3d 1208, 1228 n.2 (D. Or. 2019)).

Essentially, if the amicus can show that their participation is useful or desirable to the Court and that they fulfill the classic role of an amicus without going so far as to become a litigant to the case, then the Court may use its discretion to permit an amicus curiae to file a brief. *See Hoptowit*, 682 F.2d at 1260; *Miller-Wohl*, 694 F.2d at 204.

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<sup>1</sup> The overruling was recognized by *Montijo v. Swaney*, 754 F. App’x 522, 524 (9th Cir. 2018).

#### IV. DISCUSSION

The main points of opposition against the Tribes' motion for leave to file an amicus brief are (1) that the Tribes lack both an express interest in the case and a valuable perspective to offer the court, and (2) that the Tribes are seeking to become parties to the case by raising additional claims for relief separate from the claims brought forth by the United States. The Court will address each of these arguments in turn and explain why it is within this Court's discretion to grant the Tribes' Motion.

##### **A. Rule 29 of the Federal Rules of Appellate Procedure**

The Tribes have demonstrated a relevant interest in the present case sufficient to satisfy Rule 29(a)(3) of the Federal Rules of Appellate Procedure. Rule 29 does not require an amicus to have standing in order to demonstrate an interest in a case or file an amicus brief. *See* Fed. R. App. P. 29. Although the disputed Idaho stockwater statutes do not apply directly to the Tribes' existing water rights (Dkt. 38-1, at 10), the Tribes have demonstrated a sufficient and relevant interest in the present case by raising concerns about the potential for the statutory scheme to affect their own water rights should the statutes be found constitutional. Dkt. 38-1, at 10–11. As it is not required for the Tribes to show that the Idaho laws directly affect their water rights in order to file an amicus brief, the interest demonstrated by the Tribes is sufficient to satisfy Rule 29(a)(3).

##### **B. Classic Role of Amici Curiae**

The Tribes have adequately shown that they fulfill the "classic role" of an amicus. The Tribes have established that they are assisting in a case of general public interest, as the present case involves multiple government entities and public law. *Miller-Wohl*, 694

F.2d at 204. The Tribes have also supplemented the efforts of counsel by expounding on the United States' arguments that Idaho's stockwater statutes violate the Contracts Clause of the Constitution and the Retroactivity Clause of the Idaho Constitution. Dkt. 38-1, at 12–23. Likewise, the Tribes are bringing the Court's attention to unconsidered law by supplementing the government's existing constitutional arguments. *See id.* Therefore, the Tribes have adequately shown that they fulfill the classic role of an amicus.

### **C. Acting as a Litigating Party or Extending Litigated Issues**

The Tribes have adequately shown that they are not seeking to become a party to the litigation nor seeking adjudication on additional claims. The Tribes bring up a takings issue in their amicus brief which is not found in the United States' original complaint. Dkt. 38-1, at 23–25. However, the Tribes do not seek an adjudication on any takings claim in the present case. Dkt. 41, at 7–8. Additionally, the Tribes are not expanding the scope of the case because they are not asking the Court to issue decisions on hypotheticals presented in their amicus brief. *Id.* Thus, this Court finds that the Tribes are not seeking to become a party to the litigation nor seeking to add additional claims.

## **V. CONCLUSION**

The Tribes have adequately shown that their amicus brief provides a relevant and desirable perspective to the Court, and they have not sought to become a litigating party to the case. Thus, it is within the Court's discretion to grant the Tribes' motion to file an amicus brief. Additionally, this Court does not find it necessary to limit the participation of the Tribes in the present case because the Tribes are not a party to the litigation and, consequently, the Court is not required to consider the Tribes' amicus brief when reaching

its ultimate decision on the constitutionality of Idaho's stockwater laws. The Court welcomes the Tribe as an amicus curiae and will allow them to file their brief.


## VI. ORDER

The Court HEREBY ORDERS:

1. The Shoshone-Bannock Tribes' Motion for Leave to File Amicus Brief (Dkt. 38) is GRANTED.



DATED: July 12, 2023

  
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David C. Nye  
Chief U.S. District Court Judge